The Tenth PART of the

REPORTS

OF

Sir Edward Coke Kt.

Lord Chief Justice of ENGLAND.

OF

The Pleas affigned to be held before the King himself, and the Privy Council of State: Of divers Resolutions and Judgments given upon solution following Arguments, and with great Deliberation and Conference of the Reverend Judges and Sages of the Law, of Cases in Law which were never resolved or adjudged before: And the Reasons and Causes of the said Resolutions and Judgments: Publish'd in the eleventh Year of the most High and most Illustrious FAMES King of England, France and Ireland, and of Scotland the 47. the Fountain of all Piety and Justice, and the Life of the Law.

COMMON LAW, as well Antient as Modern.

Deo duce, supuxa.

Lex tibi quod justum est, Judicis ore, refert.

Justitia non novit Patrem, Matrem, neque Fratrem; personam non accipit, sed Deum imitatur. Jerom.

41 officium Justiciariorum spectat, unicuique coram eis placitanti justitiam exhibere. Westm. 2. cap. 39.

In the SAVOT:

Printed by E. and R. Nurr, and R. Gosling, (Affigns of Edw. Sayer Esq.) for D. 1520tone, I. Malthoe, B. Lintot, R. Gosling, M. Hears, A. Mard, M. Innys, I. Dsbozn, A. Moodward, I. Pooke, F. Clay, A. Motton, R. Milliamson and A. Mard.

M DCC XXVII.

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described the state of the state of UM a publicis meis ministratiohibus quandoque vacarem (affita alacriter Industria mihi ex more solito perquam familiari) in Confortem, faluteque meæ dulcissimæ patriæ cogitata, in confolationem) precibus hiis etiam atq; etiam exorfus affiduis, Adfit amanitas Jebova Dei nostri nobis, & opus manuum nostrarum institue in nobis, ipsum inquam opus manuum nostrarum institue, propitio Omnipotentis ductu & auxilio, decimum hoc meum opus, a docto & benevolo Lectore contemplandum, edidi & in lucem protuli.

Veram pars hæc & fidelem continet Relationem quorundam Judiciorum & Sententiarum, in e-

I my Times of Leisure after my publick Services (chearfully taking Industry my old Acquaintance for my Confort, and aiming at the Good of my dear Country for my Comfort) and beginning with this continual and fervent Prayer, The Pfal. 90. 1.17. glorious Majesty of the Lord our God be upon us; Oh prosper thou the Works of our Hands upon us, Oh prosper thou our handy Works. I bave, by the most gracious Direction and Affiftance of the Almighty, brought forth and published this tenth Work, to the View of the Learned and Benevolent Reader.

This Part containeth a true and just Report of certain Judgments and Resolutions given in his Maje-A 2 sty's

Inflice upon great and mature Deliberation, and in Cases of as great Importance and Consequence as in any of my former Commentaries, which I have taken upon me and finished (though it bath been more than difficult to me) to avoid that the which venerable Verity doth blush at for fear, that is, That she which is the Foundation of Justice Should not be bidden and unknown; Veritas abscondi erubefcit, nihil enim magis metuit quam non proferri in publicum, vult fe in luce collocari, & quis illam occultatoecultetve, quam omnium oculis expositam effe eft æquissimum? Neither is she pleased, when once she is found out and revealed to be called into Argument, and Question again, as if she were not Verity indeed; and therefore the Rule is, Eatenus ratiocinandum est donec veritas inveniatur, ubi inventa est Veritas ibi figendum judicium: Nay sometimes Truth is lost by too much Altercation, nimia altercatione veritas amittitur. She takes small Delight with Varuish of Words or Garnifb of Flowers; for fim-

fty's principal Courts of minentioribus suæ Majestatis Curiis Justitiæ administrandæ, summa atque matura deliberatione latorum, calibus tanti ponderis & momenti, quanti hii superiorum meorum Commentariorum, quicunque fuerunt. Laborem hunc ego (mihi fane difficilem plus fatis) suscepi immo & perfeci, ad declinandum id quod metuendo veritas ipía veneranda erubescit, nimirum ne illa, a qua habet Justitia firmamentum, lateret minus cognita: Veritas abscondi erubescit, nibil enim magis metuit quam non proferri in publicum; oult fe in luce collocari, & quis illam occultat, occultetve, quan omnium oculis expositam ese est equissimum? Verum femel inventa & patefacta iteratam reduci in questionem & dubio subeffe (quafi veritas revera non effet) prorius indignatur; unde regula elt, Eatenus ratiocinandum donec veritas inveniatur, ubi inventa est veritas ibi figendum Judicium; nonnunquam enim nimia altercatione veritas amittitur: Verborum elegantia florumve fragrantia se vestiri nequaquam curat, Simplex enim est sermo veritas,

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put, utrunque participat, ex capite nempe Judicium, ex corde Simplicita-(ad veritatem evehendam, errorique rebus tantis viam præcludendam) veras certaique horum Judiciorum & Sententiarum tum rationes tum caulas (quæ in actis publicis haud exprimuntur) posteritati univerlæ plane fideque divulgari, Lectoris docti & discretioris censura terminandum relinquo.

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1. Retuli primum (temporis licet terie non fit orimus) caium de Xenodochio Regis Jacobi, a Thona Sutton armigero fundato, merito quoniam (ut opinor) præcedat, duplicem ob caufam, 1. guod in camera Scaccarii agitabatur, ubi, altissima illa Inquisitione, omnium Anglia Judicum veredicto, proxenodochio Billa vera prominciabatur; 2. Qdhujus X enodochii fundatio est, opus fine exemplo. Malorum imitatio exemplum plerunque fuperat, bonorum vero con-

veritas, annue o nopes rie plex est fermo veritas, anneilas του, Cujus fedes απλώς ὁ λογος τῆς αληθείας cum fit inter Cor & Ca- tou, for her Place being between the Heart and the Head doth participate of them both, of the Head tem. Necesse necne sit for Judgment, and of the Heart for Simplicity. Now, whether it be not necessary that the true and just Reafons and Causes of these Judgments and Resolutions, which are not expressed in any Record, for the Advancement of Truth and the preventing of Error, in Matters of fo great Importance and Consequence, should be plainly and faithfully published to all Posterity, I leave to the Cenfure of the learned and judicious Reader.

> 1. I have reported in the The Cafe of first place, (though it be tal. not first in Time) the Case of the Holpital of King James, founded by Thomas Sutton E/q; for that m mine Opinion it doth merit to have the Precedency for two Causes, first, for that it was an Exchequer-Chamber Cafe, subere by the Verdict of the Grand Jury of all the Judges of England, it was for the Hospital found Billa vera: 2. For that the Foundation of this Hospital is opus line exemplo. The Imitation of Things that be evil

evil doth for the most Part exceed the Example, but the Imitation of good Things doth most commonly come far short of the Precedent: But this Work of Charity bath exceeded any Foundation that ever was in the Christian World, nay the Eye of Time it self did never see the like.

Annuus valor poffestionum

For the first Gift by Sutton of Lordsbips, Manors, Lands, and Tenements to continue for ever for the Maintenance bereof, doth amount to the clear yearly Value of 3500 l. or near prius datarum. thereabouts, and within these few Tears will be increased to about the yearly Value of five Thou-(and Pounds. Probatio charitatis exhibitio operis. And besides all this, Sutton left to descend to the Plaintiff (a Man of mean Quality) the Manor of Tarback in the County of Lancaster, confisting of a fair ancient House, two Parks and large Demesnes plentifully flored with Timber of the yearly Value of 300 l. and 50 l. by the Tear of the Rent of Affile, together with the Rectory of worth 100 l. per Annum within the same County.

The large Revenues of

fectatio, nimis manca, exemplar sæpissime non attingit: Hoc vero Charitatis opus, quæcunque novit Orbis noster Christianus fundamenta, antecellit omnibus, immo dicam, hujusce instar feculorum omnium nufquam vidit oculus.

distinction in the said Prima enim a Sutton donatio Dominiorum, prædiorum, fundorum & tenementorum in perpetuam fustentationem ejuidem remansurorum, 3500. li. annui valoris plus minus attingit, & non ita multos post annos ad annualem fummam 5000 li. proveniet. Probatio Charitatis exbibitio operis. Quin & Sutton præterea reliquit descensurum Actori (viro plebeio) prædium de Tarbocke in comitatuLancast. fe extendens in prospicuam pariter ac antiquam domum, bina vivaria & latifundia proceris undiquaque referta arboribus ad annuum valorem 300 li. & ultra hoc 50 li. redditus antiqui per annum, una cum Rectoria de

infra comitatum eundem, que valet rool. per annum.

Ampli hujus celeberrimi this famous Hospital are Xenodochii proventus in quatuor

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quatuor præcipue usus & are to be imployed principroposita instituuntur: 1. pally for four special In-In dignos illos innuptos tents and Purposes: First, Duces, Præfectos, mili- for the Relief of fuch telve sublevandos, qui in worthy and well esteemed bello usque ad necem Captains, Commanders and Reip. causa ausi sunt, Souldiers, as be unmariamque emeriti in res an- ried, and have adventured gustas inciderunt & infir- their Lives in the Wars in funt. 2. Ad captivos for the Service of the indigentes redimendos, Realm, and are fallen illos præsertim qui, mi- into Poverty and Impotenfera fub servitudine Infi- cy. 2. For redeeming of delium, fidem fuam Re- poor Captives, especially gionemque orthodoxam such as are under the miseconstanter professi funt. rable Thraldom of Infidels, 3. Ad publicum Ludum and constantly keep their herarium constituen- Faith and the Profession of dum, doctumque Ludi- true Religion. 3. For the magistrum & Hypodi- Erection of a Free-School, dalcalum fustentandos, and Maintenance of a wi pauperum pueros bo- learned Schoolnaster and nis tum literis tum mori- Usber for training up poor bus erudiant, quo otium Children in good Literature malorum omnium radix and virtuous Education, witerur. 4. Necessaria hoc and for avoiding of Idle-Lenodochium Theologo nefs the Mother of all Vice gavi & docto suppedita- and Wickedness. 4. Witht, ad residentes singulos in this Hospital there shall his Xenodochium præ- be for ever maintained a dicato sacro Dei verbo grave and learned Divine instruendos, & ad sacro- for the Instruction of all anda Mysteria rite ce- within this Hospital by branda, tum & juvenes preaching of God's boly were religionis elemen- Word, for the due Celebrais catechizandos: Qui, tion of Divine Service, alii, ut perficientur and the boly Sacraments, olus, Fundator insuper and the Catechising of the mgentes pecuniarum co- Touth in the Principles of for the um suorum Richardi Accomplishment and Main-Sutton Armigeri & Jo- tenance of which and other A 4 godly

godly and charitable Uses, hannis Law generos, dethe faid Founder bath left posuit. alfo a very great and large Stock of Money to bis Executors Richard Sutton Efg; and John Lawe Gent. two faithful, conhant, and industrious Per-Constitution of the Active Down to the contract of

Charity is founded in the tatis opus spatiosis illis & spacious and specious House augustis fundatur tectis called the Charter-House, quibus nomen est Le in the Parish of St. Se- Charterbouse in Parochia pulchre in the County of Sancti Sepulchri in Co-Middlefex, baving fair mitatu Middlefex' quibus Orchards and Gardens, and contigue adjacent horti containing twenty Acres & pomaria amenishma, within the Precinct there- & infra ejusdem circuiof, so as a Man may say tum viginti numerantur of it, that it is tanquam jugera, unde dici potest orbis in urbe; a Place tanguam Orbis in urbe, (as it appeareth by Record locus sane (ut memoranand History) ordained of dis & Historia videre est) God for pious and charitable Uses. For Sir Walter Many of Henault Nam Dominus Gualterus (who was oreated by King Edw. 3. Knight of the Garter for bis Service, which with singular Commendation be performed in the French Wars) when the Pestilence fo raged in London, that the Churchyards were not sufficient to bury the dead Bodies, especially of the Poor, purchased the Place where now this famous Hospital is erected, and caused the same to be consecrated for

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This Work of Piety and Hoe pietatis & charioperibus pletatis & charitatis a Deo destinatus: Many Hanonientis (quem cum ftrenue in bello Gallico fummo omnium applausu fe gestisset, Rex Edw. 3. aureæ perifcelidis ordine decoraffet) pefte jam tum in Londino ita ubique graffante, quod cœmeteria ad sepelienda defunctorum cadavera (præcipue inopum) non latis fuerunt, emit Locum in quo celebre istud erigitur Xenodochium, & in sepulturam inopum Christianorum

Christianorum (qui dum vixerunt templa fuerunt Spiritus Sancti) dicavit: Audi itaque monumentum inde publicum, Anno Dom. 1349. & anno regni Regis Edw. 3. 23. regnante magna pestilentia, consecratum fuit boc cometerium, &c. in quo & infra septa ejusdem sepulta fuerunt mortuorum corpora plus quam quinquaginta millia: Cessante vero, ope divina, pestilentia, idem Gualterus Many, an. Dom. 1371. & Regis Ed. a quadragelimo quinto, inibi fundavit monachos Carthulianos, qui vitio Linguæ, monachi de le Charterboufe vulgo dicti fuerunt: Adeo ut solum hoc, quod olim Gualterus Many tum Eques tum miles ad inhumandos defuntos inopes donavit, jam enuo Thomas Sutton tum armiger turn miles ad holpitandos inopes & infirmos vivos constituit & delignavit: Merito igitur huc spectat quod dixit Propheta ille regalis, Parafti, per bonitatem tuam, Pauperi Dens. Decifus denique fuit hic casus exultantibus multumque Jubilantibus omnibus qui vel interfuerunt vel de judicio quidquam audiverunt, & hoc quatuor

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the Burial of poor Christians (which, while they lived, were the Temples of the Holy Ghost) and the Record telleth you that Anno Domini 1349. Et Anno Regni R. E. 3. 23. regnante magna pettilentia confecratum fuit hoc cometerium, &c. in quo & infra lepta ejuldem sepulta fuerunt mortuorum corpora pluiquam quinquaginta millia. But after the Plague by the Goodness of the Almighty ceased, the same Sir Walter Many in the Tear of our Lord 1371. and in the 45, Year of King E. 3. founded the Carthufian Monks there, who by Corruption of Speech were vulgarly called the Monks of the Chartre-house. So as the Soil which of ancient Time was given by Sir Walter Many, a Knight and a Soldier, for the Sepulcbre of poor Men when they were dead, is now by Thomas Sutton, an Efq; and a Soldier, converted and confecrated to the Sustenance of the poor and Impotent while they live. And therefore a Man may truly apply to this Place the Saying of the Royal Prophet, Thou Lord of Plalm 68. thy Goodness hast prepared it for the Poor.

And

ed with the great Applause of all that beard it, or of it, and principally for four Causes: First, for the Ho- respub. Christiana (si prinour of our Religion, that mum spectes fundamenbath produced such a Work of Piety and Charity as nover 2. In regiæ Majestatis was in the Christian World for the first Foundation: 2. For the Glory of the King's Majesty, to whom In pietatis simul ac chaex congruo & condigno ritatis incrementum, ne it is dedicated and beareth bomines deterrerentur a piis bis Name. 3. For the In- & bonis operibus: Postrecrease of Piety and Chari- mum vero, ut obstructuros tr. ne homines deterre- iniqua loquentium. Hoc rentur a pils & bonis operibus: And, Laftly, ut nostræ ornamentum) afobstruatur os iniqua loquentium. And I date affirm it for the Honour of. our Religion, that more of (ncb good Works of Piety and Charity bave been founded within this Realm, fince the Beginning of the Reign of our late Queen Elizabeth of ever bleffed Memory, during the glorious Sun-shine of the Gospel, than in many Ages before. And it bath been observed, that (by the Bleffing of Almighty God) this Kingdom of England, for Piety, Profit and Pleasure, viz. for this and such other Works of Piety, 2. For the Crown's Inheritances of Honours, Manors, Lands, &c. and Certainty of year-

And this Case was adjudg- de causis. 1. Religionis nostræ in honorem, quæ tale pietatis & charitatis produxit opus, quale tota tum) nuiquam produxit; gloriam, cui ex congruo & condigno dedicatur, nomenque ejus habet. 3. denique (ut Religionis ferere volo, hujufmodi plura pietatis charitatifque facta fuisse opera ab initio regiminis nuper Reginæ Eliz. æternæ piæque memoriæ, fub aprico Evangelii fplendore, quam multis feculis retro elapsis. Quin & hoc regnum Angliæ (annuente Divino numine) pietate, proventibus, jucunditate, videlicet, hoc & ejulmodi pietatis operibus. 2. Coronæ hæreditate, Honorum scilicet, prædiorum, fundorum, &c. aliorumque annualium proventuum certitudine. 3. Sylvis, faltibus, vivariis, aliifque lo cis amœnis, ampliffima totius orbis Christian Monarchia

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2. In casu deinde Ma- 2. Then have I publish- Mary Portingembris fingulis evitata thereby avoided. fe triumphabat.

observatur. Forests, Chases, Parks and other Places of Pleasure, bath exceeded the greatest Monarchy in the Christian World. modish recuirs

na Portington (in univer- ed in Mary Portington's con's Cafe. sale principis & patriæ Case, for the general Good commodum) honorifica both of Prince and Coundivulgavi funera frivo- try, the bonourable Funeral brum istarum novella- of fond and new-found mmque perpetuitatum, Perpetuities, a monstrous partus portentosi ex me- Brood carved out of mere inventione ementiti, Invention and never known Legis olim peritis pla- to the ancient Sages of the e ignoti; portentosum Law; I say monstrous, for dico, quia ut apud Phy- that the Naturalist saith, sologos est, Monstra ge- Quod monstra generanmantur propter corruptio- tur propter corruptioem alicujus principii: nem alicujus principii: Dico nihilominus hono- And yet I say bonourable, ifica, eo quod vermes for that these Vermin have in nobiles quampluri- crept into many bonourable as familias correpse- Families. At whose solemn int: Quibus quidem in- Funeral I was present and ti exequiis, & ad ob- accompanied the Dead to nionis sepulchra mortu- the Grave of Oblivion, but concomitavi, plangere mourned not, for that the tem nequirem, uhi to- Commonwealth rejoiced, Respubl. libera (ut that fetter'd Freeholds and mimur) tenementa & Inberitances were set at reditates, fuis tandem Liberty, and many and exolvisse compedibus, manifold Inconveniences to damna reipub. quam- the Head and all the Memrima tum capiti tum bers of the Commonwealth

3. Sequitur casus de 3. Jennings's Case vouch- Jennings's mings, quem memo- ed in Mary Portington's Case. hum habes in casu Ma- Case, and doth concern the

common Affurance of the Realm.

Lamper's Cafe.

4. And next after cometh Lampet's Case, where Perpetuities of Leases for many thousand Tears are by Consequence overthrown.

The Cafe of the University of Oxford. s. The Case of the University of Oxford (a
famous Seminary of the
Church and Commonwealth)
tendeth to the Advancement of God's true Religion, and in some Degree
for the better Maintenance
of a learned and religious
Ministry out of both the
Universities of Cambridge
and Oxford.

The Bishop of Salishuy's Case.

bury's Case, against both the Diminution of the Posfessions and yearly Revenues of the Archbishops and Bishops of the Realm, and the Prejudice of their Successors.

Whifter's Cafe.

7. Whistler's Cafe containing divers material Points for the better Confinition of Letters Patent of Inberitance, in divers Points commonly happening.

The Case of the Churchwardens of St. Saviours.

8. The Case of the Churchwardensof the Parish of S. Saviours; wherein Letters Patent of Leases are well expounded for the quieting of the Possessions of many

riæ Portington; & de communi ftabilimento fundorum in hoc regno agit.

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4. Casus de Lampet est proximus, ad perpetuitates dimissionum pro multis annorum millibus de-

ftruendas.

J. Deinde cafus Academiæ Oxoniensis (celeberrimi Ecclesiæ & Reip, seminarii) in Religionis Orthodoxæ propagationum tendit, & quodam modo in meliorem eruditi & religiosi ministerii ex utrisque Academiis Cantabrigiæ & Oxoniæ suftentationem.

6. Casus Episcopi Sarisburiensis, est contra diminutionem possession num & annuorum reddituum Archiepiscoporum kuju gentis, & successorum successorum

6. Casus de Wbistle diversos continet articulo materiales de exponendi literis patentibus de hære ditate, in rebus plurimi indies emergentibus.

8. Custodum sive gardi anorum Ecclesiæ parochi alis sancti Salvatoris cast literas patentes dimissio num optime explana quo securi sint Tenente reg

regii de possessione fua, k consequenter multi alii de hæreditate & statu fuo.

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9. In Curiæ Mareschalle cafu, prima institutio k jurisdictio ejusdem Curiæ manifeste patet: Quamvis enim Lex fatis ota fuerit, ante hunc gium decretum, ex liris nostris & memoranis temporum omnium accessive; sicuti tamen uminum curius, mæandros, illapsus, & elapsus otorie edocet experiena vulgaris, dum fons ple interim abdite deliescit; ita isto de casu, lapacitatem, processus & rivilegia hujuice fori, odices nostri annorum terminorum sæpius didicata habent, tum & misdictio ejustem apud ulgus plene intellecta t, quum interea, vera originalis institutio, nquam fons ipfe, lateadmodum recondita oblcura, priusquam ab tiquitate indicata fuit, tam dilucide genuium priorum actorum mitialium sensum, liforumque nostrorum raonem, de vera hujus uriæ jurisdictione detravit, quod & ipfi Opnentes, veneranda illumati Antiquitate, a raof the King's Farmers, and by Confequence of the Inberitance and Estates of

many others. 9. The Case of the The Case of the Court of Marshalfea; Marshalfea. wherein the original Inftitution and Jurisdiction of that Court is clearly manifested. And albeit the Law was well known before in this Cafe both by our Book Cases and Records in all Succession of Ages, yet as in great Rivers, the Courses, Windings, Fallings in, and Outlets, are by Experience vulgarly known, whereas the very Fountain and Head it felf lie many Times bidden and fecret, fo in this very Cafe, the Capacity, Process, and Privilege of this Court was often resolved in our Books of Years and Terms, and the Juri diction commonly known: And yet the true original Institution and Fountain it self lay somewhat deep and obscure, until it was wrought out by Antiquity, which bath fo manifested the true Sense of the ancient Acts of Parliament: And the Reason of our Books, concerning the Original and true furifdic-

tion of this Court, as the

very Opposites, being by

venerable Antiquity in-

lightened, are by Reason

convinced,

rity satisfied; and there- ritate se satisfactos hafore they are worthy of Re- bent: Culpandi igitur prebension which contemn funt, qui rerum antiquaor neglect the Study of rum studium (comitem Antiquity (which is ever femper habens honorem) accompanied with Dignity) tanquam aridam & nimi as a withered and back- retrospicientem curiosita R. 3. cap. 9. looking Curiofity: Multa tem, vel temnunt vel fal ignoramus quæ non late- tem negligunt: Multa igrent si veterum lectio fuit noramus quæ non laterent nobis familiaris: And as si veterum lectio fuit no the Alluminor (poken of in bis familiaris. Sicut mi in Law, giveth Light and niator (de quo in Lege fi Luftre to the Letter or Fi- mentio) literam vel cha gure to be coloured; fo racterem miniandum val Antiquity doth give Light de illustrat, sic Antiquita with great Grace and Or- fummo cum decore & nament, both for the Un- ornamento nos illustra derstanding and Meaning ad literam antiquorus of the Letter of ancient statutorum, librorum Acts of Parliament, and authoritatem in Lege, tu of our Book Cases and Au- comprehendendam tur thorities in Law. I wish intelligendam. Simility the like were done for all fieri de omnibus ejus M bis Majesty's Courts of jestatis Curiis Justice Justice, a Matter to them mihi in votis est: Quo that have orderly read and quidem pluris labor well observed our Books, quam difficultatis et and Authorities of Law, quis codices nostros & of greater Labour than Dif- lege authoritates ordin ficulty; and yet would the evolverit recteque inte Work greatly tend to the lexerit, & proculdub Honour of the Law, and magnum afferret Le the preventing of many splendorem, quin & mu Questions, Suits, and un- tas questiones, action necessary Charges and De- minus necessarias expe lays.

LeonardLovier's 10. LeonardLovies's Cafe is principally grounded up- vies sibi maxime had

convinced, and by Author tione vincuntur & author fas, & dilationes antiparet.

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10. Cafus Leonard L on the Statutes of 32 H. 8. fundamentum statuta

cap. 5. de Testamentis, quæ fanciri videantur ad extorquenda Juris-prudentum ingenia; adeo multæ perplexæ & involutæ quæstiones ex illa stirpe egerminaverunt: Adjuncto tamen hoc casu superioribus, in explanationem horum itatutorum, a me relatis (cafui nempe de Butler & Baker in tertio meo Commentario fol. 27. Cafui Georgii Curson equitis, in fexto meo Commentario fol. 75. cafui Richardi Pexall, in octavo meo Commentario fol. 83. cafui de Might ibidem fol. 163. & calui Vigilii Parker ibidem fol. 173. &c.) quo modo mihi periuadeo, fi non omnia tamen maxima dubia & icrupuli ex illis enata statutis, in generalem totius regni pacem dirimuntur & amoventur. Sed hoc non obstante, viri circumspecti & considerati (uti ipero) dum adhuc integri funt & fani, uxoribus, liberisque prospicient, & ex optimo Jurisperitorum confilio, res suas superstites disponent instrumento legali, quod, fi velint, ad libitum revocabile esse potest; & negotium hoc usque ad ultimam volun-

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H. 8. cap. 1. & 34 H. 8. cap. 1. and 34 H. 8. c. 5. of Wills: Which Statutes might seem to be made ad extorquenda jurisprudentum ingenia, so many and such intricate and knotted Questions have grown out of those Roots; and yet adding this last Case to the former Cases reported by me for Exposition of those Statutes, to Butler and Baker's in the 3 Part of my Reports, fol. 27. Sir George Curson's Case in the 6 Part, fol. 75. Sir Richard Pexall's Case in the 8 Part, 83. Might's Case, ibidem 163. Vigil Parker's Case, ibid. 173. &c. I am persuaded, that if not all, yet the principal Scruples and Doubts upon those Statutes, are for the general Quiet of the whole Realm cleared and resolved. And yet Men of advised and settled Judgments, will in their perfeet Health provide for their Wives and Children, and by found Advice of learned Counsel, settle their Estates by Conveyance in their Life-time, which may, if they will, be revocable at their Pleasure; and not to leave it to stand wholly upon their Will, which many Times is made when they lie on their Deaths-bed (and few Men

Men pinched with the Messengers of Death, have a disposing Memory) sometimes in Hafte, and commonly by sender Advice, and is subject to so many Quefions upon concealed Tenures in Capite and other Temures by Knight's Service (in this Bagle-ey'd World) former Conveyances, and other Matters of Fatt, as in Effect they do for want of due Information and Instruction superare jurisprudentum artem. And it is some Blemish or Touch to a Man well esteemed for bis Wifdom and Discretion all bis Life, to leave a troubled Estate behind him amongst bis Wife, Children or Kindred after bis Death. A competent. Estate to Wife, Children, or Kindred, in Certainty and Quiet, is far better then a greater accompanied with Questions and Troubles. But bereaf I bave given also a light Touch in the End of Butler and Baker's Cafe before mentioned; and therefore baving given this Admonition, I will bere pass over to the next Case.

tatem non procrastina. bunt, quæ plerunque in extremis conditur (& perpaucis a mortis præcurioribus pressis memoriæ est dispositura) modo festinanter & fæpiffime confilio imprudentum, & ita multis fubditur controversiis de latentibus tenuris in capite aliifve tenuris per servitium militare (in feculo hoc aquilino) prioribus concessionibus, aliifque rebus de facto, ut hujufmodi testamenta (ob consultationis & instructionis privationem) superent fere jurisperite rum artem. Labes etiam nonnulla est & infamia viro, totius fue vite curriculo, de prudentia & discretione, bene existimato, res fuas difficultatis plenas uxori, liberis feu cognatis post obitum Juum relinquere. Re mediocres curifque folutæ uxori, liberis yel cog natis longe funt eligibiliores, quam magis am plæ quæstionibus & mo leftiis involutæ. Sed hoc in conclusione call de Butler & Baker paucu attexi: monitione idcirco hacfubnexa, ad proximum casum properemus.

field fententia legis reto gitur, de allegatis chart

Dr. Leyfidd's Cafe. Case; wherein the Reason of Law is opened, where-

Syngraphis, in Curia nstrandis ; ibique cauest de periculo prodi per testes coram lecimviratu Syngra-& scripta, nulla ilm habita monstratieo enim fit instruita erafa, interlita, ive adulterata, vel Gone verborum legain lege prorfus invel -revocabilia, woad tenentes & tores irrita (ubi fupmuntur, & corum teilliteratorum testilo confirmatur, nulla hibita hac in re direcne) admissa fuisse ut hentica; postea vero re rum agitata casuq;melinipecto, cum Curia deultrarioportuisse scripdirexerit, eorum iniditas comparuit, recque valuit: Quod in ia de Banco Mich. 5. gis Jacobi inter Small Blackledge, in Curia meræ Stellatæ inter me & Eyer, &, ex Judex fui, in Cirn meo annotavi.

Edwardi Seymor agit de warrantis, tili sane doctrinæ ge-

fore Charters and Deeds pleaded, ought to be Shewed forth in Court, and a Caveat given bow dangerous it is in Evidence to a Jury to prove Deeds and Writings by Witneffes without shewing forth; for by that Means Deeds that be rased, interlined, or otherwise adulterated, or utterly insufficient for want of legal Words, or revocable and void against Fermors and Purchasers, bave by concealing and proving the Effect of them by Deposition of unlearned Men, for want of good Direction, passed for good and authentical; and afterwards the Matter coming in Question again, and the Court directing upon Examination of the Case that the Deed ought to be shewed, upon Sight thereof the Insufficiency appeared, and so the Right prevailed: Which I bave known both in the Court of Common Pleas, amongst others, Mich. 5. Regis Jacobi between Small and Blackledge, and in the Court of Star-chamber in the Case between Green and Eyer, and sometime in my Circuit fince I was called to be a Judge.

12, Edward Seymor's Seymor's Cafe. Cafe, concerning Warranties, a cunning Kind of Learning

Co. Lit. 306. 2.

and very necessary for the Purchaser: For it armeth. bim not only with a Sword by Voucher to get the Victory of Recompence by Recovery in Value, but with a Shield to defend a Man's Freehold and Inberitance by way of Rebutter, which Title of the Law is in my Opinion excellently curious, and curiously excellent. And yet when you have read this Cafe, you will concur with me that it was more weighty than difficult.

Beamfage's

Then cometh in 13. Beawfage's Case, as well for the Safety of Sheriffs and their Officers and Ministers, as for avoiding of Extortion, crimen expilationis, which in holy Writ, in that Imprecation against God's Enemies, is called a consening Sin, Let the Pal. 109. v. 10. Extortioner consume that be bath, and let the Stranger spoil bis Labour: Wherein you shall find the Statute of 23 H. 6. cap. 10. made for avoiding of Extortion, Perjury, and Oppressing, which are for the most Part linked together, very well and justly expounded.

Learning (I affure you) nere, & emptori imprimis necessario; cingit enim non folum enfe Vocationis, ad victoriam compensationis, recuperatione scilicet ad valorem, reportandam, fed scuto etiam, ad liberum tenementum & hæreditatem propugnanda per formulam propellendi (apud nos, per voy de Rebutter) qui Legis Titulus (ni me fallo) egregie curiofus & curiofe Lecto tamen egregius. hoc cafu, plus in fe habere momenti quam difficultatis, mecum confenties.

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13. Proxime accedit casus de Beawfage, tam ut indemnes fint Vicecomites eorumque miniftri, quam ad extortionem eradicandum (crimen expilationis, quod in facris scripturis in imprecatione illa in inimicos Dei malum illaqueans nuncupatur, Illaqueet expilator quicquid est illi, & diripiant extranei laborem illius): Ubi etiam Statutum de 23 H. 6. cap. 10. in extortionem, perjurium & oppressionem editum (quæ plerunque inter se concate nantur (optime explicatum habes.

14. Deinde fequitur casus de Denbawd, de concedendo Tales de circumstantibus ad assisas, ut melius expediantur explorationes; quo tam Vicecomites & ministri fui, quam partes, attornati & folicitatores fui monendi funt, ne machinatione feu confœderatione aliqua, directe vel indirecte, liberos tenentes iniquos & nimis amicos arcumstare, vel dolo mao Tales ascribi faciant, in fubversionem veritatis & justitiæ, & actum perutile de 35 H. 8. c. 6. illudendum: Ingens fiquidem hoc est crimen, & gravi mulcta, carcere, aliaque pœna exemplari plectendum.

AND STATE OF THE PARTY OF THE P 15. 20. Cafus de Lofield & de Clun, refervationes reddituum super dimissionibus ad terminum annorum, &c. tracat, & quomodo expomentur; Et hos evolvant omnes necesse est, quia omnibus fere interest.

16. Proximus est casus Antburi Legat, contra depopulandam Ecclesiam Rempubl. coronam toamque hanc nationem, retextu literarum pa-

14. Next followeth Den- Denbawa's bawd's Case for the just Case. and due granting of Tales de Circumstantibus at the Affifes for the better Expedition of Trials; wherein as well the Sheriffs, and their Ministers, as the Parties, their Attornies and Followers are to be warned, that by no Practise or Confederacy, directly or indirectly, they procure not partial and affected Freeholders to stand in View, or by any Shift to be packed on the Tales. whereby Truth and Justice may be subverted, and the necessary Act of 35 H. 8. c. 6. finisterly abused, for that is an high Offence, and to be punished by a grievous Fine, Imprisonment, and other exemplary Punishment.

15. 20. Lofields and Lefield v. Chu. Clun's Case, touching Reservation of Rents upon Leases for Years, &c. and bow the same shall be construed, necessary to be known of all Men, because in Effect it concerneth all.

16. Then followeth Ar- Legar's Cafe. thur Legat's Case, against the Robbing of Church and Commonwealth, of. Crown and of the Country, by Colour of pestilent Patents

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Pilford v Chey-

17, 18. After that Pilfold and Cheyney's Cale, concerning the true and legal Manner of the Assessing and enquiring of Damages, &c. a necessary Kind of Learning, that many Errors, the Causes of Expence and Delay, bave been therein often committed.

The Mayor of Limi's Cafe.

19. Next cometh the Case of the Mayor and Burgesses of King's Linne in the County of Norfolk, wherein is well discussed what shall be deemed in Law the true Name of the Corporation in Substance, to the End that Bonds, Covenants, Leafes, Grants, or Conveyances be not in respect of too much Niceness and Curiosity therein against all Honesty and just Dealing, impeached and overthrown. And to fay the Truth I find not in any of our Books from the Beginning of the Reign of E. 3. until the Reign of E. 6. that any Bond, Leafe, Grant, or Conveyance have been overthrown by Judgment, in respect of the Misnaming of the Corporation, but after a Window was once opened, it is a Wonder to consider tentium pestiferarum & prædabundarum de terris concelatis.

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17, 18. Casus de Pilfold & de Cheyney de recto legalique modo damnorum taxandorum & inquirendorum, necessario admodum genere eruditionis, eo quod errores (dispendii & dilationis causæ) in illis frequentes fuerunt.

19. Inde tibi occurrit cafus Majoris & Burgensium de Linne Regis in comitatu Norfolciæ, ubi bene disceptatur quid in lege dicitur verum corporationis nomen, ne obligationes, pacta, dimiffiones, concessiones, & instrumenta, cura nimis detricis & curiofitate, contra jus omne & fidem, impediantur & enerventur. Et, ut verum profitear, in nullo codicum nostrorum invenio, ab initio regni Edw. 3. usque regnum Edw. 6. obligationum, dimiffionum, concessionum sive instrumentorum vel unum, male nominatæ corporationis causa irritum judicari: fenestella vero semel aperta, qualia arrepta fuerunt lumina a corporationibus tam spiritualibus quam temporalibus, per

6 Co. 65. 2.

actiones, ad annullanda wi ipforum dimissiones, concessiones, & instrumenta, in nocumenta namplurium & ruiminationis prætextu, mim est cogitare, immo onos omnes dolet meporari: Sed motos præa componere fluctus. lum &, ut referatur hic fus, in causa fuerunt n & quies tam occuntium & aliorum qui corporationibus aliid fibi vendicant, quam illarum, de pactis aline rebus eis habitis nt magis valeat quam

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a. Habes item casum Osborn, ubi copiose emitur, quando vermale & incongrue ina, &c. destruunt, viyel adnihilant breinstrumenta, chartas, pta, vel recorda, &

2. Casus de Read & man, agit de Sumitione & Separatione, invenies ubi mors parsparatæ destruet bre-& ubi non; & ubi ounquam mors unius entium, licet non thir non destruct toriginale, &c.

nuestiones & in lege what Light hath been taken by Corporations both Spiritual and Temporal, by Questions and Suits in Law, to avoid their own Leases, Grants, and Conmm multorum, malæ no-, veyances, to the Hindrance of Multitudes, and Undoing of many, under Colour of misnaming themselves, it grieveth good Men to remember; fed motos præstat componere fluctus. And this Case is reported for the Surety and Quiet as well of their Fermors and others claiming from them, as of themselves, for Estates, Covenants and other Things made unto them, ut res magis valeat quam pe-

21. Then have you Os-Osborn's Cafe. born's Case, wherein is at large resolved where falle or incongruous Latin, &c. Shall abate, vitiate or make void Writs, Specialties, Charters, Deeds, or Records, and where not.

22. Read and Red-Read v. Red. man's Cafe, concerning man. Summons and Severance, wherein you Shall find, when the Death of the Party severed shall abate the Writ, and when not, and in some Cases where the Death of one of the Plaintiffs, though he be

not severed, shall not abate the original Writ, &c.

R. Smith's Case. 23. Richard Smith's Case, in what Case a Quare impedit lieth de medietate, &c. Ecclesiæ.

Three Cases on the Stat. of Sewers.

24, 25, 26. Then Shall you read certain Resolutions upon the Statutes and Commission of Sewers, a necessary Kind of Learning to be known, but more necessary (I assure you) to be put in due Execution: And that by colour thereof a Private be not privily intended, when the Publick is openly pretended. And in those Cases is well discuffed what the Commissioners of Sewers may justly and safely do by their Wildoms and Discretions.

Scroop's Cafe.

27; And lastly, Scroop's Case, touching a Point of Revocations, very necessary to be known, for that Revocations are grown so frequent: and the Resolution of this one Point may prevent many Controversies that might have grown out of them, and that most commonly between Brethren and others near of Blood and Alliance.

If any do marvel, that sceing the Matter of every particular Case doth rest in a narrow Room, and that my Manner of report-

23. Richardi Smith cafus est de Quare impedia de medietate, &c. Ecclesia

24, 25, 26. Evolve deinde quædam Judici in statuta & commissione de Seweris, genus Doo trinæ notu perutile, exe cutioni vero debita demandaretur multo ma gis necesse, nec prætext inde privatum fit occul defignatum, dum publ cum aperte prætenditu Hiis etiam casibus ber differitur, quid commis onarii de Seweris fide indemniter ex eorum pr dentia & arbitrio agan

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27. Cafus denique Scroop articulum de vocationibus tractat, magis notu dignum que revocationes adeo n funt frequentes: Et jus folius articuli de multis litibus abinde turis, plerumque i fratres & alios fang & affinitate proxisobvium eat.

Si mirum cuipiam deatur (cum casus jusque particularis n riam angustæ circum bant metæ, & Re

mea pro more adeo compendiofa fit, fummam referens totius dicti ex una parte feorlim, & fic vicissim ex altera, initium semper sumens ab objectionibus, & in Judicio & sententia Curiæ finem faciens (quæ mihi videtur optima Relationis methodus) qua de caula cafuum modo editorum nonnulli ita profuse se extendunt; in promptu causa est (a me tamen non approbata) nimirum, propterea quod quæftiones vel objectiones pro tribunali ortæ, pariter ac argumenta e codicibus fumpta, aliæque in lege abundant. authoritates Et, vero verius dicam, plures quæstiones ex rei pondere quam e difficulute cafus enascuntur; minquam enim novi magm momenti casum pace g, plurimis non adhibiis exceptionibus in reardationem Judicii. Antiquus ille argumentandi nos ad septum Curiæ er Servientes ad legem urisconfultos quos Apprenticios vocamus forius immutatur: vix unquam librum el authoritatem nomiatim produxerunt, ut idere est in 40 E. 3. &c. Est tenus, &c. vel Z Re

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ting is summary, relating the Effect of all that was said of the one Side by it self, and so likewise of the other, beginning ever with the Objections and concluding with the Resolution and Judgment of the Court, (which I bold to be the best Order of Relation) wherefore divers of these Reports are drawn into so great a Length; the Cause is apparent, though I allow not of it, that the Questions or Objections moved at the Bar, and the Arguments drawn from Books, Cases, and other Authorities in Law be so many, and to say the Truth, many Questions are raised rather out of the Weight of the Matter than the Difficulty of the Case: For I never faw any Cafe of great Value proceed quietly without many Exceptions in Arrest of Judgment. The ancient Order of Arguments by our Serjeants and Apprencices of Law at the Bar is altogether altered. 1. They never cited any Book Cafe or Authority in particular, as is bolden in 40 E. 3. &c. but est tenus ou agree in nr'e liures, ou est tenus adjudge in termes, or fuch like, which Order yet remains in Moots at the Ba

Bar in the Inner Temple to this Day. 2. Then was the Citing general, but always true in the particular; and now the Citing is particular, and the Matter many Times mistaken in general. 3. In those Days few Cafes in Law were cited, but very pithy and pertinent to the Purpose, and those ever pinch most, and now in fo long Arguments with fuch a farrago of Authorities, it cannot be but there is much Refuse, which ever doth weaken or lessen the Weight of the Argument. This were eafily bolpen, if the Matter (which ever lieth in a narrow Room) were first discerned, and then that every one that argueth at the Bar would either Speak to the Purpose or else be short.

But seeing my Desire is and ever bath been that the Counsel Learned and consequently the Parties might receive Satisfaction, for which Cause all the Counsel that have argued in the Case to be adjudged, ought to give diligent Attendance and Attention on those Days when

fimile, qui modus in questionibus arguendis (quas vocamus Moots le barre) in interiori Templo hucusque retinetur. 2. Eo temporis annotatio fuit generalis, vera autem femper in particulari; hodie, econtra, annotatio est particularis, multocies vero abs re in generali. 3. Tunc rariffime prolati fuerunt casus fi non apte & ad rem, (& hii in arcem quæstionis invadunt) nunc vero in prolixis admodum argumentis de farragine authoritatum compositis, multa male opposita necesse est, quæ semper argumentationem vel infirmant vel inficiunt. Huic facillime remedium apponeretur, fi res (qua agrum minus latum occupat) prius nota fuerat, & deinde unusquisque pro Tribunali caufam tractaturus, vel congrua vel fuccincta eloqueretur.

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Quoniam vero, mihi in votis est semperque fuit, tum Jurisconsultis tum partibus satisfacere, (quamobrem Jurisconsultos singulos, qui causam discutiendam disputaverunt, sedulo attendere dinteresse oportet, diebus Argumentationum Judicum, diu ante publica

Statuti

statutis & præfixis). Hac de causa (cum mei ipsius fit labor & res non fine fructu suo) casus majoris nomenti fusius retuli, fummam totius vel objecti vel discussi complectens: Metallicus tamen haud dubio expertus effe potest, qui venas facundiores invenit & fectatur, quanquam minores & infoecundiores ignorat, circa has enim fortasse materiam supera-Hoc tantum a bit opus. Jurisperitis universis cavendum adjiciam (cum, ut germanus Legis fenfus apprehendatur, disceptationes fuæ eniterentur, in meliorem Justitiæ administrationem) ne faciant quod fit plane injustitia: Illum enim sentio, qui textum, codicem, feu in Lege authoritatem a proprio fuo ac genuino intellectu five torquet ive invertit, vel ad veritatem aliquam confirmandam, peccare in Jutitiam distributivam, cujus est suum cuique triwere. Hii denique (qui pla argumenta viva voce smul ac vultu gestuque vivorum, in Justitiæ sede palamque in foro, pronunciata audiverunt) neuicquam credant, illo no spoliari decore, cum,

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the Judges do argue, which are ever publickly long before appointed, and prefixed on certain Days. I bave for that Purpose (the Pains being my own, and the Matter not without (ome Fruit) in the Cases of greatest Consequence made the larger Report, comprebending the Effect of all that was objected and resolved; and yet be may be a good Miner that findeth and followeth the main Veins, though he discovereth not the small and unvaluable Fillets, for there peradventure materiam fuperabit opus. This only I will add as a Caveat to all the Professors of Law, that seeing their Arguments should tend for the Finding out of the true Judgment of Law, for the better Execution of Jufice, that therein they commit not manifest .Injuflice; for I am of Opinion that he that wresteth or misapplieth any Text, Book, or Authority of the Law against his proper and genuine Sense, yea though it be to confirm a Truth, doth against distributive Justice, which is to give to every one his own. And let not those that heard the Arguments them elves uttered viva voce, with the Counte-

Countenance and Gesture of leving Men in the Seat of Justice in open Court, fear that when they shall read them privately in a dead Letter, it will want much of the former Grace: For though I confess that habet nefcio quam energiam viva vox, yet when they hall read the Effect of all that was spoken at large at several Times by sevesal Persons, at the Bench, and at the Bar by either Part, of many and divers Matters collected and united together, and reduced ad idem, concerning every particular Point, it will eafe them of much Labour, and conduce much to the fetling of their Judgment, and that, if I be not deceived, not without a Student's Delight.

And for that I am intreated to shew as well the Times when the Register, the Mirror of Juflices, Glanvill, Britton, Fleta, the Tales or Novæ narrationes, Old Natura brevium, Littleton, and other Books of the Laws now extant were published, and where the Authors themselves appear not in those Books, who were the Authors of the same, as also the Antiquity of Serjeants at Law: for their mortuo charactere, privatim lecta fuerint, licet enim babeat nescio quam energiam viva vox, fummam tamen omnium, utrinque a viris diversis variisque vicibus de tribunali & pro tribunali fusius dictorum, cum perlegerint, fummam dico rerum multarum, immo inter fe disparium, recollectarum, unitarum, & ad idem reductarum. de articulo quolibet particulari, faciles proculdubie fibi fui erint fudores mentesque magis firma; & in hiis (nisi fallor) ftudioforum erit delectatio non modica.

Quippe quum me velle narrare, tam rempora editionum Registri, Specuh Justiciariorum, Glanville, Fleta, Novarum Narrationum, Littletom, alierumque de Lege librorum modo extantium, quique condiderunt hos quorum authores in libris iplis non extant, quam antiquitatem Servientium ad Legem, nonnulli rogitaverunt: Ut habeant quo quiescant, imprimis Registram re**fcripta**

scripta sive brevia origi-nalia Juris municipalis comprehendens, librum de Lege effe vetustissimum; cafus enim e codice & archivis de Anno 26 Edw. tertii lib. Affis. pla. 24. evincit manifeste, brevia originalia Affilæ ut & alia brevia originalia in usu fuisse ultra omnem hominum memoriam, (hoc eft, quorum inftitutio, vel recordatione, vel lectione, vel ex scriniis ostendi non potest) multo ante devicthanc Regionem: Que quidem hic folummodo percurro, eo quod eadem in procemio tertii mei Commentarii copioie magis adnotavi, & quoad posium iterationem minus gratam evita-Quin & liber re conor. iste nominatur Registrum **statuto** Cancellaria in Welt, 2. cap. 24. quia Cancellaria est tanguam officina. Fustitia, unde brevia originalia univeria emanant. Cujus de authore, vel potius de authoritate, audi Bractonum lib. 5. traft' de exceptionibus cap. 17. fol. 413. Breve quidem, cum sit formatum ad similitudinem regulæ Juris, quia breviter & paucis verbis intentionem proferentis exponit

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Satisfaction they shall unsterstand, that first the Regilter, which containeth the original Writs of the Common Law, is the ancientest Book of the Law; for the Book-safe and Record of 26 E. 3. lib. Aff. pl. 24. proveth directly that original Writs of Affife and other original Writs bad been Time out of Mind of Man (that is, the Beginning whereof cannot be known either by Remembrance, Reading or Record) long before the Conquest, whereof I give bere but a light Touch, for that I have cited the fame more at large in the Preface to the 3 Part of my Commentaries, and I am void as much as I can unpleasing Iterations: And this Book is called Registrum Cancellaria, in the Statute of W. 2. cap. 24 because that the Chancery is tanquam officina Justiciæ, all original Writs iffuing out of that Court; Now for the Authority thereof, Bracton lib. 5. tract' de Exceptionibus cap. 17. fol. 413. faith thus, Breve quidem cum fit formatum ad fimilitudinem regulæ juris, quia breviter & paucis verbis intentionem proferentis exponit & explanat, ficut.

cut regula juris, rem quæ est breviter enarrat, &c. Sunt quædam formata fub certis casibus de curfu & de communi concilio totius regni concesia & approbata, quæ quidem nullatenus mutari poterint absque consenfu & voluntate corum. Now joining both those Authorities together, Man may safely conclude, that this Book is most ancient and of greatest Authority. I confess that, by Porce of Acts of Parliament in succeeding Ages, divers other Writs original in Cases newly happening are (as appeareth in the same) added thereunto. And of these ancient Writs, I will fay (as Sir Thomas Smith a Secretary of State (aid) that all the Secretaries in Christendom may learn of them to express much Matter in few and significant Words.

For the Mirror of Justices, speculum Justiciar', the most of it was written long before the Conquest, as by the same appeareth, and yet many Things were added thereunto by Horne a learned and discreet Man, (as it is supposed) in the Reign of E. 1:

& explanat, sicut regula Juris rem quæ est breviter enarrat, &c. Sunt quædam formata sub certis casibus de cursu & de communi concilio totius regni concessa & approbata, qua quidem nullatenus mutari poterint absque consensu & voluntate eorum. Binis igitur hiis authoritatibus connexis, concludere licet hunc esse librum tum antiquitatis tum authoritatis maximæ: Virtute autem actorum comitialium, seculis subsequentibus, varia alia brevia originalia in casibus recentioribus emergentia (ut in eo liquet) annecti fateor. Et de hiis antiquis Brevibus dicam (quod dixit Thomas Smith eques auratus divæ quinetiam Elizabethæ nuper Reginæ ab Epistolis) Secretarios Christiani orbis universos, rerum congeriem paucis & fignificativis verbis exprimere, ex illis posse discere.

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Speculum Justiciariorum quod attinet, maxima ex parte literis consignatum fuit, gente hac nondum subacta, ut ex illo perspicuum est: Cæterum (ut ferunt) multa adjecta fuerunt per Horne virum eruditum satis & prudentem sub regno Edw. 1.

Glanvilla

Glanvilla scripsit regnante Hen. 2. ut in libro suo constat: Qualem se gessit, præfatio in octavum meum librum (Historiam continens mea sententia Lectu dignam) plane edocet. Et circa id Tempus Codicillus de Veteribus Tenuris editus suit.

Bractonus (ut alibi notavi) circa Hen. 3. regni finem commentatus est.

Britonus opus eruditum composuit, idemque anno ¿ Edw. 1. promulgavit, per mandatum Regis Edward. 1. (Justiniani nostri) prout in 35 Hen. 6. apparet; Cujus tenor se habet sub nomine Regis, tanquam ab illo confectus, pro more Justinimi Institutionum, quas fibi arrogat Justinianus, ab aliis licet structæ fueint. Iste Johan. Britonus fuit Episcopus Herefordensis, summa & recondita in Lege communi cientia, ornamento professioni suæ singulari, & bi securitate, & solatio ptimo. Vide Stamdford' rarogativa Regis 68 21. fleta, opusper eruditum iquem Jurisconsultum wam optime composim, cui in carcerem,

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Concerning Glanvil, be wrote in the Reign of H. 2. as appeareth by this Book; and what he was it appeareth in my Preface to my eighth Book, a History in my Opinion worthy the Reading. And about the same Time, was the Treatise, called the old Tenures, made.

Bracton, as elsewhere I have noted, wrote about the End of the Reign of H. 3.

composed a Britton. learned Work, and published the same in 5 E. 1. as appeareth in 35 H. 6. by the Commandment of E. 1. (our Justinian) the Tenor whereof runneth in the King's Name, as if it bad been written by him, answerable to Justinian's Institutes, which Justinian assumeth to bimself, altho' it were composed by others. This J. Britton was Bishop of Hereford, and of great and profound Judgment in the Common Laws, an excellent Ornament to bis Profession, and a Safety and a Solace to him/elf, vide Stamford, Pr. R. 6 & 21.

Fleta is a Work well written by some learned Lawyer, who being committed to the Prison of

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the Fleet, bad Leifure to compile it there; and therefore stiled his Book, by the Name of the Fleet, Pleta, and concealed his own Name, as in the Preface to bis Work appeareth; The Author thereof is unknown, but it appeareth in his Book that be lived in the Reigns of King E. 2. and E. 3. Vide lib. r. cap. 20. Sect. Qui ceperunt, lib. 2. cap. 66. Sect. Item quod nullus. But of the certain Time when it was first published (for Peradventure it bad Additions afterwards) there is some Question made: But in feeking after this, I find that this Book took the Name of the Prison of Fleet, and that the Fleet took the Name of the River running by it the Fleet.

The Book entitled Novæ marrationes, vouched and allowed in 39 Hen. 6. 30. by learned Prifot and his Companions Justices of the Court of Common Pleas, by the Name of the Tales, was published about the Reign of King Edw. 3. And Old Natura Brevium afterwards in the Reign of the same King, for fol. 100. b. the Stat. of 5 E. 3. c. 12. is called le novel Statut: But

qui Fleet dicitur, ablegato, scribendi otium fuir plus fatis, ideoque librum fuum, fecundum Flete denominationem, Pletam appellavit, & nomen fuam fuppreffit, ut in operis fui procemio conftat: Author itaque ejuidem incognitus eft; quem tamen sub Edw. 2. & Edw. 3. viguisse liber ejus dilucide oftendit, Vide Lib. 1. cap. 20. Self Qui ceperunt, Lib. 2. cap. 66. Sect. Item guod nullus. De tempore autem in quo primum editum fuit (quia nonnulla postea accesserunt) dubitatur: Czterum, in hoc perscrutando, Librum istum a carcere Fleta, Fletam vero ab amniculo præterlabente fic appellato, nomen sortitum fuille reperio.

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Novæ narrationes, in 39

H. 6. 30. per doctum

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Banco Justiciarios, sui
nomine Narrationum, me
moratus & approbatus
juxta initium regni Re
gis Edw. 3. in lucen
prodiit: Tum & non
multo post, Vetus Natur

Brevium, Rege eoder
gubernante; nam f. 100

b. statutum de 5 Edw. 3

cap. 12. novum statutus

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nuncupatur; exinde tamen multa illi annexa funt: De libro boc Anthonius Fitzberbert eques. in proœmio ad tractatum fuum de Natura Brevium, dicit, Et auxy pur cel intent & purpose, fuit compose, per un sage & discreet bome, un liver appell Natura Brevium. Liber Fortescue de laulibus Legum Anglia, sub Rege. Hen. 6. confectus hit, multa lectu imprimis digna in se habens: dem etiam pro titulo & jure Regis Hen. 6. fupremi fui domini ad scepm Angliæ tenenda lirum conscripsit, quem oftea ex veritatis concientia retractavit; quoum uterque apud me lint: Et in hoc laudem ngularem meruisse videur, quod illorum pars ulla fuit qui suos amasin errores, fed inventa nel veritate, facile fucobuit. lite Johannes rtescue fuit eques, & incipalis Angliæ Justiarius & postmodum Cancellarius ominus igliæ constitutus fuit; in hodiernum usque em magni est ejus pocritas,

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fince, Additions bave been made thereunto. Of this Book Sir Anthony Fitz-herbert in his Proem to his Natura Brevium faith as followeth, Et auxy pur cel intent & purpose, fuit compose per un sage & discreet home un liure appel Natura Brevium.

Fortescue de laudibus legum Angliæ; this Book was written in the Reign of King H. 6. in Commendation of the Laws of England, containing withal much excellent Matter worthy the Reading: He wrote also a Book in Defence of the Title of King H. 6. bis sovereign Lord and Master, to the Grown of England; but after out of Truth and Conscience retracted the same, both which I have: Wherein he deserved singular Commendation, in that he was not amongst the Number of those qui suos amassent errores, but yielded to Truth when he found it. This Sir John Fortescue was Lord Chief Justice of England, and afterwards Lord Chancellor of England, and his Posterity remain in great and good Account to this Day.

Stathom's Abridgment, first published in the Reign of King H. 6. by Stathom a learned Lawyer of that Time: And the Abridg. of the Book of the Assistes, published also about the same Time, but the Author thereof is unknow.

Littleton's Tenures, a Book of found and exquifite Learning, comprehending much of the Marrow of the Common Law, written and published by Thomas Littleton a grave and learned Judge of the Court of the Common Pleas, fometime of the Inner Temple, wherein he had great Furtherance by Sir John Prisot Lord Chief fustice of the Court of Common Pleas, a famous and expert Lawyer, and other the Sages of the Law who flourished in those Of this Days. Book Hotoman a Civilian and Canonift in bis Commentary de verbis feudalibus, verbo feudum, giveth bis Censure, with what Charity or Discretion judge, learned Reader: Stephanus Pasaverinus excellenti vir ingenio, &c. libellum mihi Anglicanum,

Stathomi Compendium, a Stathomo Jurisconsultissimo, regnante Hen. 6. primo editum suit: Et Libri Assistante epitome juxta id temporis etiam in lucem prodiit, Author vero ejusdem ignotus est.

Littletoni Tenura, (reconditæ quidem & exquifitæ literaturæ Liber, Legis communis quali medullas ipfas complectens) a Thoma Littletono, viro gravissimo pariter ac in Lege peritiffimo, Judice Placitorum communium, (quondam e societate interioris Templi) compofitæ fuerunt & promulgatæ; cui adjumento non parum fuit Dominus 70bannes Prisot Curiæ ejusdem Justiciarius principalis, vir Jurisconsultissimus, aliique Legis Sagacissimi ea tempestate so De hoc libro Ho rentes. tomanus, Juris civilis 8 canonici peritus, com mentario suo de verbi feudalibus, verbo feudum censuram facit, sed qu charitate vel prudent eruditus Lector fit Judes Stephanus Pasaverinus ex cellenti vir ingenio, & libellum mibi Anglicanun Littletonu

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Littletonum dedit, quo fendorum Anglicanorum Tura expomintur, ita incondite, absurde & inconcinne scriptum, ut facile appatet verum esse quod Polilorus Virgilius in Anglicana Historia scribit, Stultijam in eo libro cum malitia & calumniandi fludio certare, De Hotomano & uthore suo merito dicam hoc & non amplius dicam, Volentes effe legis Dottores, non intelligentes eque quæ loquuntur, neque quibus affirmant: Miss igitur faciamus in umerum illorum qui vierant quæ ignorant. elus siquidem & perium manifestum est, uris civilis peritos vel Canonistas (satis notum quor & justis de causis) ut de jure municipali Ingliæ, quod non profimur, scriptitare, aut ignotos dicere calumm. Certo certius riculum, & audax nimis me foret, fi (quoniam rtem ego parvulam uris Civilis & Canonici, xilio nonnullo perutili aujumento adhibito, volvi) de illis vel in illa atim scribere aggredet. Illorum autem pame ad e omanifestis rethe funt erroribus, ut ovorum istorum machi-

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Littletonum dedit; quo feudorum Anglicanorum jura exponuntur, ita incondite, absurde & inconcinne scriptum, ut facile apparet verum esse quod Polidorus Virgilius in Anglicana historia scribit, Stultitiam in eo libro cum malitia & calumniandi studio certare. Hotoman and his Author I may justly say, and will fay no more, volentes effe legis doctores, non intelligentes neque quæ loquuntur neque de quibus affirmant, and therefore let us leave them among the Number of those qui vituperant quæ ignorant. It is a desperate and dangerous Matter for Civilians and Canonists (I speak what I know and not without just Cause) to write either of the Common Laws of England which they profess not, or against them which they know not. Sure I am, it were a ridiculous Attempt and Enterprize in me (that because I confess I have read some litthe Part of the Civil and Canon Laws, and that with some good Assistance and Help) by and by to write either of them, or against them. But their Pages are so full of palpable Errors and gross Miflakings,

flakings, as these new Authors are out of Charity pitied, and their Books out of our Judgment cast away unanswered. Alas, our Books of Law feem to them to be dark and obscure; but no wife Man will impute it to the Laws, but to their Ignorance, who by their sole and superficial Reading of them cannot understand the Depth of them. I will not Sharpen the Nib of my Pen against them, for that I pity the Persons, and wish they bad more Discretion for that I bonour their Pro-fession. And for Littleton's Tenures, I affirm and will maintain it against all Opposites what soever, that it is a Work of as absolute Perfection in its Kind, and as free from Error, as any Book that I have known to be written of any human Learning. And the Posterity of this Sage of the Law (unto whom he is a great Ornament) doth florish unto this Day: Of whom a Man of great Excellency in bis Profes-Cambden 574. from bath justly faid, that be was a famous Lawyer, &c. to whose Treaty of Tenures Saith be, the Students of the Common Laws are no less behold-

natorum ex charitate mis fereamur, & illorum libellos (dato responso) consulto rejiciamus. At si libri nostri de Lege quali enigmatici & obfcuri illis videantur; fapientes illud Legibus nostris hand vitio vertent, quin immo inscitiæ sciolorum istorum qui superficiem folam Legum vix dum penitrarunt, ideoque fenfum earum reconditum intelligere nesciunt. Sed in illos calamum non acuam; miferet me hominum, & discretiores effe velint opto, professionem enim illorum in honore habeo, Littletoni Tenuras quod attinet, hoc affirmo & contra refragantes quolcunque ratum faciam, opus effe fuo genere adea absolutæ perfectionis, adeoque de erroribus liberum, atque aliquo aliud mihi notum huma nam tractans erudition nem. Et hujusce viri Legis peritissimi, poste ritas (cui magno fuit ille ornamento) ad hunc ul que diem vigescit: Quen vir, professione sua max ime egregius, non imme rito appellavit Jurisperi tissimum, &c. ad cuju tractatum de Tenuris (in quit) Legum communiu Audio

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Fitzberberti Compendium elaborate collectum fuit & in Anno 11 Hen. 8, a Fitherberto tunc Serviente ad Legem editum: Idem aliud etiam compofuit opus, cui nomen est Natura brevium, exquilirum fane & accurate structum & anno 26 Hen. 8. divulgatum ab eodem tunc Domino Antonio Fitzberberto equite, Judice Curiæ placitorum communium. Idem non multo post, tractatum hum de Eirenarcha condidit: Cui Judices (ut er rescriptis hausi) vitio dederunt, quod eo assemit Eirenarchas ex Commissione sua ad audiendum & terminandum feonias, &c. potestatem abuille, homicidium tamen ex malitia prepenta udire & determinare on potuifle, quod (inter dia) Eirenarchas per lem posse facile affirmaant.

Dialogus inter facræ heologiæ Doctorem & egis communis Studio-4 anno 23 H. 8. conmptus fuit ab authore ppellato S. Germin, viro ing than the Civilians to Justinian's Institutes.

Fitzherbert's Abridgment was painfully and elaborately collected and published in the eleventh Tear of King H. 8. by Fitzherbert then Serjeant at Law: And be wrote also another Book called bis Natura brevium, an Work exquisitely penned, and published in the six and twentieth Tear of Hen. 8. when he was Sir Anthony Fitzherbert Knight, one of the Judges of the Court of Common Pleas: About the same Time be wrote bis Treatife of Justices of the Peace; wherewith the Judges (as I have seen it reported) found Fault, for that be therein affirmed that Juflices of Peace baving by their Commission Authority to bear and determine Felonies, &c. could not bear and determine Murder, which (amongst others) they clearly over-ruled that Justices of Peace lawfully might do.

Doctor and Sudent, a Book written in 23 H. 8. Dialogue-wise between a Doctor of Divinity and a Student of the Common Law, the Author's Name b 2

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was St. Germin, a difcreet Man and well read, I assure you, both in the Common Law, and in the Civil and Canon Laws also.

Book intitled A Treatife made by Divines and others learned in the Laws of this Realm, concerning the Power of and the the Clergy, Laws of the Realm, published in the Time of King Henry 8. and after the fix and twentieth Tear of bis Reign; for therein the Act of Parliament made in that Year is mentioned, which Book I have.

The small Treatises concerning the Manner of keeping Court Baron and Leet, &c. Modus tenendi hundredum, &c. Returna brevium, Charta feodi, &c. and Ordinances for Fees in the Exchequer, were all published in the End of the Reign of King H. 8.

The Book called the Diversity of Courts, was compiled after the 21 Tear of H. 8. for the Statute of 21 H. 8. for Restitution of Goods upon Indictment, &c. is recited, fol. 117. a.

Stamford, This Book containeth two Parts, one of the Pleas of the Crown;

fine dubio prudente & juris tum Municipalis tum Civilis & Canonici fatis perito.

Liber, qui inscribitur Tractatus a Theologis & aliis Juris patrii peritis, de potestate Cleri, & de Legibus bujus regni, emissus fuit sub H. 8. post annum vicesimum sextum suscepti regiminis, nam in eodem, actum Parliamentarium ejusdem anni memoratur: Qui liber penes me est.

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Minores illæ Commentationes de Modo tenendi Curiam dominicalem & vifum Franciplegii, &c. Modus tenendi Hundredum, &c. Returna brevium, Charta feodi, &c. & Ordinationes pro feodis in Scaccario, in exitu regni Hen. 8. compositæ suerunt.

Liber inscriptus Curiarum distinctio, ab anno vicesimo primo Regis H. 8. collectus suit: Statutum enim de 21 H. 8. de restitutione bonorum, super indictamento, &c. fol. 117. a. recitatur.

Stamfordi liber est bi membris, unus de causi coronam attingentibus

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alter, non ita grandis, de Prærogativis Regiis: Cæterum posterior prius vulgatus suit per Willielmum Stamford' equitem & Justiciarium Curiæ placitorum communium, quondam e societate hospitii Graii, virum Legum municipalium consultissimum, cujus posteri hodie vigent.

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Perkins, commentariolum quosdam legum patriarum titulos tracturs, scite & literate confectum, regnante E. 6. per Johannem Perkins Juridicum, a nobis Utterlarister dictum, e societate Templi interioris,

emissum fuit.

Missa non faciam Sumarium illud statutorum, & magnum Fitzberberti pendium Indicem, nec rum Intrationum, per-& laborate mmode oc mihi credas) collecta edita sub regina Maria, elertim duo priora, in ectationem & auxilinon mediocre Legis diosorum, per Willielm Raftall gravissimum communi banco Judi-& virum strenuum ummopere industrium gelta, multa tamen tunc & statutorum Sumto & libro Intrationum ellerunt: Quem etiam

the other, of a leffer Volume, of the Prerogative of the King; but the later was first published by Sir William Stamford Knight, sometime of Grays Inn, a Man excellently learned in the Common Laws; whose Posterity prosper at this Day.

Perkins, a little Treatife of certain Titles of the Common Laws, wittily and learnedly composed, and published in the Reign of King E. 6. by John Perkins an Utter-barrister of the Inner Temple.

I cannot pretermit the Abridgment of the Statutes, and the Table to Fitzherbert's great Abridgment, and the Book of Entries, profitably and painfully (I assure you) gathered and published in the Reign of the late Queen Mary, but specially the first two, tending very much to the Ease and Furtherance of the Professors of the Law, collected by William Rastall a reverend Judge of the Court of Common Pleas, and of great Industry; many Things being since added both to bis Abridgment of Statutes, and to. the b 3

the Book of Entries, who originally was also the Author of the Book called the Terms of the Law.

The Lord Brook's A-bridgment, first published in anno 16 Reg. Eliz. This was gathered by Sir Robert Brook Knight, Chief Justice of the Court of Common Pleas, for his private Use, and was published long after his Decease; a worthy and painful Work, and an excellent Repertory or Table for the Tear Books of the Law: Sed satius est petere sontes quam sectari rivulos.

Plowden's Commentaries, confifting of two Parts, both of them learnedly and curiously polished, and published by himself, the one in anno 13 reg. Eliz. and the other in the 21 Tear of the same Queen, Works (as they well deserve) with all the Professors of the Law, of bigh Account. The Author was an ancient Apprentice of the Law, of the Middle Temple, of great Gravity, Knowledge, and Integrity.

The Lord Dyer's Book, containing the fruitful and fummary Collections of that reverend Father of the

habuit authorem liber de expositione vocabulorum Juridicorum.

Domini Brook Compendium editum fuit in anno 16. Reginæ Eliz. Constructum fuit a Roberto Brook equite, fori placitorum communium Justiciario principali, usui fuo proprio, & in lucem prius non prodiit quam author ipfe obdormiverat; præclara quidem lucubratio, & codicum legis repertorium perquam utile; sed satius est petere fontes quam sectari rivulos.

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Commentariorum Plow. prima & item altera pars, tam literate quam limate politæ, a feipso emissa fuerunt, prima in anno 13 reg. Eliz. fecunda an 21. ejuldem reginæ, opera (ut bene merentur) apud legum professore fingulos imprimis magn astimata. Habuerunt au thorem, virum jurisperi tum quem Apprenticium vocamus) multa ztat provectum, e focietal medil Templi, gravitatis, scientiæ, integritatis.

Domini Dyer liber, tiles fimul ac compendi fas comprehendit obse vationes reverendissi

illius legum patris 7ac. Dyer equitis, actionum communium Curiæ capitalis non ita pridem Justiciarius, in utilitatem & meditationem fuam propriam delignatas; quas author ipie forma qua publicari iunt nunquam cogitavit: verum, quales post obitum ejus inventæ, anno 25 Reginæ Elizabethæ prelo commisse fuerunt, quarum quidem origo manu fua propria confcripta penes me eit.

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ndishi illi Collectanea denique Magistri Lambard de Eirenarcharum officio, methodice digesta, juxta finem regni Elizabethæ reginæ publica devenerunt.

Servientium ad legem antiquitatem quod attinet, ex libro de Justiciariorum speculo dilucide paret lib. 2 cap. des Loiers (ubi de legibus hujus regni & ejuldem ministris multo ante subjugationem agitur) quod Servientes ad legem antiquitus nominabantur Narratores, Countors feu Counteurs, quia brevis originalis materiam, & ipliffimum fecte fundamentum complecticur Narratio, ex qua, quali ex parte digmore, iuam mutuati

Law Sir James Dyer Knight, late Chief Justice of the Court of Common Pleas, for his private Use and Remembrance, and never intended by him in this Form to be made publick; but were as he left them imprinted after his Decease in anno 25 Reg. Eliz. the very Original whereof written with his own Hand, I have.

Lastly, Master Lambard's Collection of the Office of Justices of the Peace, methodically written, was published towards the End of the Reign of Queen Elizabeth.

Concerning the Antiquity of Serjeants at Law, it is evident by the Book of the Mirror of Justices lib. 2. cap. des Loiers, which treateth of the Laws of this Realm, and the Minifters thereof long before the Conquest, that Serjeants at Law were of ancient Times called Narratores, Countors, or Counteers, because the Count or Declaration comprehended the Substance of the original Writ, and the very Foundation of the Suit, of which Part, as of the worthieft they

they took their Denomination, and is all one in Effeet, with that which in the Civil Law is called Libellus: And they loft not that Name in the Reign of King E. 1. as it appeareth by the Statute of W. 1. c. 29. an. 3 E. 1. for there be is called Serjeant Countor, Serviens Narrator: And by the Statute Articuli super Chartas cap. 11. anno 28 E. 1. Nest my a in-. tender que home ne poit aver couniel des Countors & des Sages gents pur lour donant; where, under this Word Countors, Serjeants at Law are included, and until this Day, when any proceeds Serjeant, be doth count in some real Action at the Bar of the Court of Common Pleas; and under these Words (Sages gents) are inc uded Apprencices at Law: But fince the Reign of E. 1. they have always been called Servientes ad Legem for their good Service to the Commonwealth by their found Advice in Law; and as in ancient culis retroactis, qui pa Time, they that preserved cem conservabant Servi and kept the Peace were entes pacis, vel ad pacen called Servientes pacis or vocabantur, haud aliter h ad pacem, so these Men Servientes legis vel ad la are called Servientes Legis gem, vel in legibus, & or ad legem or in legibus, nominantur. Et vetult

funt demonstrationem, quæ revera idem eft quod in Jure Civili Libellus: Nec nomen istud tempore E. primi amiserunt, ut in Statuto de W. I. cap. 29.-an. 3 E. 1. liquet, nam ibi appellatur Serviens Narrator: Et per Statutum de Articulis super chartas cap. 11. an. 28 E.I. Nest my a entender, que bome ne poet aver counsell des Countors, & des Sazes gents, pour lour donant; ubi in hoc vocabulo (Countors) Servientes ad legem includuntur, & ad hunc ufque diem, cum ad Servientis gradum quifquam vocetur, in actione aliqua reali ad feptum Curiæ placitorum communium narrat: Et fub hiis vocabulis (Sages gents) includuntur Jurifperiti, quos Apprenticios dicimus. Sed a tempore Regis Ed. 1. hucuique ob præclara fua in rempubl. præstita servitia per -confilia plena prudentia & fidelitatis, Servientes ad legem dicti fuerunt quemadmodum enim ie

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illo tractatu de Speculo Justiciariorum ubi supra, Counteurs, Servientes in patriis Legibus periti defcribuntur, populo, ad actiones luas pronunciandas & defendendas ufque ad fententiæ examen, pro honorario fuo defervituri; quorum officia ibid' præclare depinguntur. Hoc magnam antiquitatem Servientium ad legem demonstrat. Inter placita de parliament tent apud Ashering anno 19 Edw. 1. in infigni illo casu Thomæ de Weylond, dicuntur Servientes in legibus & confuetudinibus Angliæ experti, &c. & in fingulis nostris libris de annis & terminis, a primo, de illis fit mentio; ut in I E. 3. 22. Serjeant k Roy, &c. Et in 1 E. 3. fol. 16. de Apprenticio fit mentio: atque ex hoc verbo (apprendre) dicitur Apprenticius, quia effe debet apprise en la Ley, camque ejus peritiam per prælectionem, in Hospitio illo Curiæ cujus e 10cietate est, super statutum habitam, manifeste Indicavit; & Servienti gradu proximus est. Quin & denominatio hujuimodi antiqua admodum est, & fic testatur, Rotulo Parliamenti in crastino

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&c. And in that ancient Treatife of the Mirror of Justices ubi fupra, Counteurs are described to be Serjeants Skilful in Law of the Realm, which serve the Common People to pronounce and defend their Actions in Judgment, for their Fee, whose Duty is there excellently described. This proveth the great Antiquity of the Serjeants at Law. Inter placita de parliament' tent' apud Athering anno 19 E. 1. in that great Case of Thomas de Weylond it is faid, Servientes in legibus & confuetudinibus Angliæ experti, &c. and in all our Books of Years and Terms from the Beginning there is Mention made of them; as in I E. 3. 22. Serjeant le Roy, &c. and in 1 E. 3. fol. 16. there is Mention made of an Apprentice; and he is called an Apprentice of the Law, of this Word (apprender) for that be ought to be apprife in la Ley, and bath manifested the same by open reading upon Some Statute in that Inn of Court whereof he is Fellow, and is next in Degree under a Serjeant. And this Appellation is very ancient, and lo is proved, Rotulo Parliamenti in crastino Epiphaniæ

Epiphaniæ anno 20 E. 1. Rot. 5. in dorfo: The Act fayeth, De Atturnaeis & Apprenticiis, Dominus Rex injunxit Johanni de Mettingham & fociis fuis, quod ipfi per corum discretionem, provideant & ordinent certum numerum de quolibet Comitatu, &c. And fo is farther proved by a Record inter communia placita tenta in Hustingo London, die Lunæ in festo Sancti Clementis Papæ, anno regni E. 3. post conquestum 23. viz. die Jovis proxime ante festum fancti Gregorii Papæ, anno domini 1348. Ego Johannes Tavie armiger lego animam meam Deo, &c. Item lego omnia tenementa mea cum omnibus pertinentiis quæ habeo in parte australi in parochia fancti Andrea, &cc. Alicia uxori mez ad totum terminum vitæ fuæ; & quod post deressum prædictæ Alicia, totum illud Hofpitium in quo Apprenticii legis habitare folebant, per Executores meos, fi fuperstites fuerint, &c. vendatur, & quod de pecunia inde percepta unus Capellanus idoneus pro anima mea, &c. celebrand', dummodo pecu-

Epiphania anno 20 E. 1. Rot. 5. in dorfo: Actus fic fe babet, De Atturnatis & Apprenticiis, Dominus Rex injunxit Jobanni de Mettingham & sociis fuis, quod ipsi per corum discretionem provideant & ordinent certum numerum de quolibet Comitatu, &c. Et fic ulterius affirmatur ex archivis, inter communia placita tenta in Hustingo London. die Luna in festo S. Clementis Papa, anno regni E. 3. post conqueftum 23. viz. die fovis proxime ante fesium fancti Gregorii Papa, anno Domini 1348. Ego Johannes Tavie armiger lego animam meam Deo, &c. Item lego omnia tenementa mea cum omnibus pertinentiis que babeo in parte australi in parochia fancti Andrea, Bo. Aliciae uxori mea at totum terminum vitæ sue; & qual post decession praditte Alicia, totum illad Hospitium in quo Apprenticii legis habitare solebant, per Executores meos, fi superstites faerint, &c. vendatur, & quod de pecunia inde percepta ums Capetlanus idoneus pro anima mea, &c. celebrand, dammodo pecunia illa perinveniatur feveraverit, Item lego totum illud tene mentum in que babite cum tribu

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tribus Shopes post decessium ipfius Alicia ad fabricam Ecclefia Santti Andrea. Ex hoc monumento tria colligo; prim' de antiquitate Apprenticiorum Legis, Quod ædes Cancellariæ in vico Holborne, modo Hospitium Tavii ante annum 23 E. 3. (circiter annos 264. retro elapios) antiquitus fuerat Hospitium Curiæ, in quo legis Apprenticii tempus tolebant impendere: 2. De antiquitate & vero harum ædium Cancellariæ nomine, rectius dictarum Holpitium Tavii: 3. Quod iuper hoc testamentum, de cafu in 21 R. 2. Tit. Divise Fitzb. 27. judicium ferebatur, quod remanere tenementi præfatæ Aliciæ ad terminum vitæ fuæ legati, ad Rectorem Ecclesiæ de Holborne & fuccessores fuos spectabat. Tum & 39 E. 3. f. 47. b. in Quod ei deforceat, Ingleby, Serviens ad legem, qui Tenenti consulebat, exceptionem hanc intendebat, Breve iltud (inquit) fundamentum habet Recordum, volumus igitur cogatur Petens Recordum (a quo breve hoc pendet) in certitudine deponere; & in calu Attinctæ & Scire facias

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nia illa perseveraverit, inveniatur. Item lego totum illud tenementum in quo inhabito cum tribus shopis post decessium iplius Aliciæ ad fabricam Ecclesiæ sancti Andree. Out of this Record I observe three Things, first, for the Antiquity of Apprentices of the Law, that the House of Chancery in Holborn now called Tavies Inn, bad been of ancient Time, before the three and twentieth Tear of E. 3. (which is about two Hundred fixty and four Tears past) a House of Court, wherein the Apprentices of the Law were wont to inbabit. 2. For the Antiquity and true Name of the House of Chancery, rightly called Tavies Inn. 3. That upon this Will the Case in 21 R. 2. Tit. Devise, Fitzb. 27. was adjudged, That the Remainder of the House devised to the faid Alice for Life, belonged to the Parson of the Church of Holborn and his Successors. And in 39 E. 3. fol. 47. b. in a Quod ei deforceat, Ingleby Serjeant, of Coun-(el with the Tenant, took this Exception; This Writ (saith be) is founded upon a Record precedent, and therefore we pray, that the

the Demandant may put the Record (whereupon this Writ dependetb) in eertain, and in Case of Attaint and Scire facias (which depend upon Records) the Tenant Shall bave Oyer of the Record: Wilby and Skipwith, This was never any Exception in this Place, but we have beard it oftentimes amongst the Apprentices in Houses of Court. And concerning Apprentices of Law thus much shall suffice.

The Manner of the Creation of Serjeants is also most ancient; for it is by Writ, which is commonly found in very ancient Regifters, and continued to this Day, in this Form, Rex. &c. Willielmo Herle, Salutem: Quia de advisamento confilii noftri ordinavimus vos ad statum & gradum servientis ad legem, in quindena fancti Michaelis proxim' futur', fuscipiend', vobis mandamus firmiter injungentes, qd' vos ad statum & gradum prædictum ad diem illum in forma prædicta fuscipiend' ordinetis & præparetis: Et hoc sub pœna mille librarum. Teite meiplo, &c. wherein for the Dignity of bim, it is

(quæ a Recordis pendent)
Tenens auditum recordi
obtinebit: Wilby & Skipwith, hujusmodi exceptionem hoc loci nunquam
novimus, cæterum, inter
Apprenticios in Hospitiis
Curiæ frequentem audivimus. De Apprenticiis
satis.

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Modus creandi Servientes item antiquissimus; est enim per breve, quod in registrorum vetustissimorum plerifque invenitur, & in hunc diem inolevit, fub hac forma, Rex, &c. Willielmo Herle Salutem: Quia de advisamento confilii nostri ordinavimus vos ad statum & gradum Servientis ad legem, in quindena sancti Micha-clis proxim' futur', suscipiend, vobis mandamus firmiter injungentes, quod vos ad statum & gradum prædictum ad diem illum in forma prædicta suscipiend ordinetis & praparetis: Et boc sub pana mille librarum. Tefte meipso, &c. Unde in ejus honorem observandum est: 1, Quod a rege, de advisamento

advisamento concilii sui inde, evocatur. 2. Per breve Regis. 3. Breve istud in plurali numero ad eum ablegatur, vocabulo vobis, dignitatis argumento fingulari. 4. Ad hatum & gradum servientis ad legem vocatur. Et in acto commitiali de 8 Hen. 6. cap. 10. de Serviente dicitur, cum statum eundem in se suscipit: Et in acto parliamentario de 8 Edw. 4. cap. 2. Al creation des Serjeants del Ley, &c. & creatio dignitatem semper intelligit. Verum interea est, quod dictum breve in Registrum excusum non inseritur, haud fecus atque brevia ad promovendum aliquem in Baronem regni, vel ampliorem dignitatem, eo quod iftiuimodi brevia funt originaliter de gratia Regis tantummodo; & quæ ad uíus publicos in Registro imprimuntur, originaliter de Jure Legis. De vocationis ejus celebritate, de Capitio, Pallio, Capillari, aliique infignibus, de apparatu Epulorum lautissimo, de aureis annulis elogatis, de ministris, aliique magnificis de more Caremoniis, ad propoliam quæstionem non atmentibus, vel verbum

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to be observed: 1. That be is called by the King by Advice of his Council in that Behalf. 2. By the King's Writ. 3. The Writ is directed to bim in the Plural Number, Vobis, a special Mark of Dignity. 4. That be is called ad itatum & gradum Servientis ad legem: And in the Act of Parliament of 8 H. 6. cap. 10. of Serjeant it is said, when he taketh the same State upon him: And in the Act of Parliament of 8 E. 4. cap. 2. Al creation des Serjeants del Ley, &c. and Creation is ever applied to Dignity. But it is true that the said Writ is not put into the printed Register, no more than Writs to call any to be a Baron of the Realm, or of higher Dignity, for that those Writs originally are only de gratia Regis; and fuch as are published in the printed Register are originally de Jure Legis. Of the Solemnity of his Call, bis Hood, Robes, VIZ. Coif, and other fignificant Ornaments, of the great and sumptuous Feast they make, of the Rings of Gold they give, of their Attendants, and other great and bonourable Ceremonies, I purpose not at this Time (being

(being not pertinent to the Question I have in hand) to write any Thing at all.

Their ancient Reputation is (I affure my felf) the better continued, because shey without the least Alteration continue the ancient Hebits and Ornaments belonging to their State and Degree: For most commonly the ancient Reverence of any Profession vanisheth away with change of the ancient Habit, albeit the newer bo more costly, courtly, and carious. And in the Act of Parliament of 24 H. 8. cap. 13. be (baving both fatum & gradum) bath the Precedency of divers that fit on the high Bench in a Court of great Eminency in Westminster Hall: but feeing there is no Remedy given by Law for Precedency I (dealing only with Matters in Law) mean not to meddle with it: And albeit I bave learned more of the Antiquity of this State and Degree in the School of venerable Antiquity; yet bereof thus much for this Time shall suffice, & valeant qui contabulatis mendaciis antiquitatem faperstruunt.

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quidem dicere non statuo.

heave Regionary Madee Honorem corum antiquum diuturniorem effe credo co quod vestes & infignia statui & gradui fuis olim folita, nulla furrepta immutatione, hodie usurpant: Plerunque enim fit, antiquam cujufque ordinis dignitatem evanescere una cum vestimenti immutatione, sit licet magis pretiofum, aulicum, & splendidum illud novitium. In acto parliam' de 24 H. 8. c. 13. (fuscepto tum statu tum gradu) multos Affessores fublimis Tribunalis in Curia fummæ eminentiæ in Aula Westmonasteriense præcedit: Sed in hoc falcem immittere nolo, cum de præcedendo, lex nullum constituit remedium, & mihi res elt cum lege tantum. De status hujus & gradus antiquitate in veneranda rerum Antiquarum schola, plura didici: Sed de hac re, hoc fatis superque: Et valeant qui contabulatis mendaciis Antiquitatem superstruunt.

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Ex Servientibus hiifce tanguam e feminario [ufitie, cooptantur Judices; nullus enim nifi Serviens Sublellii Regii, five actionum communium Judex, vel Capitalis Baro Scaccarii, eonstitui potest, nec in hospitiorum Servientium ad legem unum vel alterum se conferre potest, nisi qui prius fuit Serviens ad legem; non enim Judicum vel Justiciariorum hospitium dicitur, holpitium Servientium ad legem: Novi enim Barones Scaccarii, hos qui non fuerunt de gradu de le coife (ut loquimur) Judices tamen vicem egerunt, in hospitiis Curiæ, quorum fuerant fodi, resedisse, & ex more Apprenticiorum legis vititos fuisse.

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Tandem vobis fit animus, perfuafum me habeo, casus illos evolvendi, quos adhuc tantum sustastis, & Tempus est Veritatis & Fustitiæ sanda adire penetralia: Valedicam igitur studiolo, cui, cum lectionis incremento, magis magisque in hoc studio delectationem exopto, quæ adirum ad venerabilem scientiam augendam dat facilimum (quem, ex ali-

Of thefe Serjeants, es of the Seminary of Justice, are chosen Judges; for none can be a fudge, either of the Court of King's Bench, or of the Common Pleas, or Chief Baron of the Exchequer, unless be be a Serjeant; neither can be be of either of the Serjeants Inns, unless be bath been a Serjeant at Law; for it is not called Judges or Justices Inn, but Serjeants Inn, for I have known Barons of the Exchequer (that were not of the Coif, and yet had judicial Places and Voices) remain in the Houses of Court whereof they were Pellows, and wore the Habit of Apprentices of the Law.

But I persuade my self you desire to read the Cases whereof I have given you a Taste, & tempus est Veritatis & Justiciæ fancta adire penetralia: And therefore here will take Leave of the good Student, to whom I wish with his increase of Reading more and more a Delight in this Study, an excellent Means to attain unto Augmentation of venerable Knowledge (which 15

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is one of the Ends of my Labours) not knowing what better Thing to defire for bim, and conclude with this Distich and Direction.

CHARLE LONG

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is, statui sudorum meorum finem) nesciens quid melius majusve ei vellem: Hoc itaque Difticho & confilio rem conficiam,

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Discendi modus est dum te nescire videbis: Difce, sed affidue, Difce, sed ut sapias.

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Termino Sancti Michaelis, An-Ropen no Regno Domini Jacobi nunc Regis Anglia decimo, Rotulo 574.

The Case of Sutton's Hospital.

Midd. ff. Emorand. quod alias, scilicet terming Full. Ch. Hist. Sanct. Trinit. ultim. præterit. ceram lib.10. p.65,66. domino rege apud Westm. ven. Simon Baxter Gen. per Georgium Cupple-dick Attornat. suum, & protulit hic in cur. dict. dom. reg. tunc ibid. existen. quandam billam suam versus Richard. Sutton armig. & Johannem Lawe Gen. in custod. Marr. &c. de placito transgr. Et sunt pleg. de pros. scilicet Jolannes Doe & Richard. Roe: Quæ quidem billa sequitur in hær verba. st. Midd. st. Simon Baxter gener. queritur de Rich. Sutton & Johanne Lawe in custod. Marr. Maresc. dom. regis coram ipso rege exist, de eo quod ipsi tricesimo de Maii anno regni domini Jacobi nunc regis Angliæ decimo vi & armis, &c. Cl'm & domum ipfius Simonis, viz. uchance-house besides Smithfield, apud paroch. sancti sepulchri in com. præd. freger. & intraver'; & alia enormia el intulerunt, contra pacem dict. domini regis nunc ad dampnum ipfius Simonis quadragint. librar. & inde produc. fectam, &c.

Et modo hic ad hunc diem, scilicet diem Veneris proxim. post Octab. sancti Mich. isto eod. termino, usq; quem diem pred. Richar, & Johannes habuer. licentiam ad billam præd. interloquend. & tune ad respond', &c. cor. dom. rege apud Westm. ven. tam præd. Simon Baxter per attorn. suum præd. quam præd. Richard. & Johannes per Thomam Heyward attorn. fuum.

Et præd. Ric'us & Johan. ven. & defend. vim & injuriam

quando, &c. Et dicunt quod ipfi non funt inde culpabil', & de hoc pon' se super patriam; & prædichts Simon Baxter similiter, &c. Ideo venit inde Jur. coram domino Rege apud Westmonasterium die Sabbati proxim. post Octabas sancti Hillarii, & qui nec, &c. Ad recogn', &c. quia tam, &c. Idem dies dat. est partibus prædictis ibidem, &c.

ff. De quo die Jur. præd. inter partes prædictas de placito prædict. per Jurat. posit. inde inter eos in respectum coram domino rege apud Westmonasterium usque diem Lunz proxim. post Crastinum Purificationis beatæ Mariz ex tunc proxim. fequen. pro defectu Jur. &c. Ad quem diem, coram domino rege apud Westmonasterium, ven. tam prædict. Simon Baxter quam prædicti Richardus Sutton & Johannes Lawe per attornatos suos prædictos; & Jur. Jur'e prædict. exact. fimiliter vener. qui ad veritatem de præmissis dicend. electi, triat, & jurat', dicunt super sacramentum suum, quod diu ante prædictum tempus quo supponit. transgress. prædict. superius sieri, quidam Thomas Sutton armig. seisit. de & in omnibus illis maneriis & dominiis de Southminster, Norton, Little Hallingbury alias Hallingury Bouchers, & Much Stambridge in comitatu Effex, cum omnibus suis juribus, membris, & pertinentiis quibuscunque, Ac etiam de & in omnibus illis maneriis & dominiis de Bustingthorpe alias Bullingthorpe & Dunnesby in comitatu Lincoln. cum fuis juribus, membris, & pertinentiis quibuscunque; ac de & in omnibus illis maneriis de Salthorpe alias Saltrop alias Halthorpe, Chilton, & Blackgrove in comit. Wilts cum fuis juribus, membris, & pertinentiis; ac de & in omnibus illis terris & patturis vocat. Blackgrove continen. per æltimationem ducent. acras pasturæ cum pertinentiis in Blackgrove & Wroughton in comit. Wilts; ac de & in omnibus illis maneriis de Mihenden alias Missenden aliter vocat. maner, de Misunden in parochiis de Wroughton, Lydeyard, & Tregole in dicto comitat. Wilts, cum omnibus suis juribus, membris, & pertinentiis; ac de toto illo manerio de Elcombe & Park vocat. Elcombe Parke cum pertinentiis in dicto comitatu Wilts; ac de & in toto illo manerio de Wattlescote alias Wigglescore alias Wiggelscere cum pertinentiis in dicto comitatu Wilts; ac etiam de toto illo manerio de Wescote alias Wescere cum pertinentiis in dicto comitatu Wilts; ac etiam de & in omnibus illis terris & pasturis, continen per æstimationem centum acras terræ & sexagint. acras pasturz cum pertinentiis, in Wigglescote & Wroughton in dicto com. Wilts; ac de & in toto illo manerio de Uffcot cum pertin. in dicto comitatu Wilts; ac etiam de omnibus illis duo-

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bus meffuagiis, & mille acris terræ, duobus mille acris paflurz, trescent, acris pascuz, & trescent, acris bosci cum pertinentiis in Brodehinton in dicto comitatu Wilts; acetiam de & in omnibus illis maneriis & dominiis de Campes alias Campes Castle aliter vocat. Castle Campes cum pertinentiis, scituat, jacen, existen. & extenden. in comitatu Cantabrig. & Essex. vel alter. eorum vel alibi in regno Anglie; ac etiam de & in toto illo manerio de Balsham in comitatu Cantabrig, cum omnibus & fingulis juribus, membris, & pertinentiis quibuscunque; ac etiam de & in omnibus illis messuag. & terris, scituat. & existen in parochiis de Hackney & Tottenham in com. Midd. cum suis juribus, membris, & pertinentiis quibuscunque; quod quidem messuagium nuper perquisitum fuit de Willielmo Bower milite, & dict. terr. in Tottenham nunc sunt vel nuper fuer. in tenura sive occupatione Willielmi Benninge Yeoman; ac de & in omnibus & fingulis maneriis, dominiis, meffuagiis, terris, tenementis, reversionibus, lervitiis, pascuis, pasturis, boscis, advocationibus, patronagiis ecclefiarum, & hæreditament. prædicti Thomæ Sutton quibuscunque scituat', jacen', vel existen. in dictis comitat. Effex, Lincoln, Wilts, Cantabrig, & Middlefex, five alter. eorum, cum omnibus & fingulis fuis juribus, membris, & pertinentiis quibuscunque in dominico suo ut de feodo: Et lidem Jurat. ulterius dicunt super sacramentum suum prædictum, quod prædicto Thoma Sutton sic inde seistt. existen', ante prædictum tempus quo, &c. scil't ad quart. Session. parliamenti incept. & tent. per prorogationem apud Westmonasterium in comitatu Middlesex nono die Februarii anno regni domini nostri Jacobi dei gratia Anglia, Francia & Hibernia Regis fidei defensoris, &c. leptimo, & Scotiz quadragefimo tertio, & ibidem continuat. usque vicesimum quartum diem Julii tune proxim. sequen. & tune prorogat. usque decimum sextum diem Octobris tunc proxim. sequen. inter alia inactitat. & stabilit. fuit authoritate ejusdem parliamenti, prout sequitur in hæc verba.

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An Act to confirm and enable the Erection and Establishment of an Hospital, a free Grammar-School, and sundry other godly and charitable Acts and Uses, done and intended to be done and performed by Thomas Sutton Esquire.

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Umbly befeecheth your Pajetty, your loyal and on tiful Subject Thomas Sutton of Balfham in the County of Cambridge Clquire, That it may please your most excellent Pajesty, and the Lozds Spiritual and Tempozal, and the Commons in this present Parlia ment allembled, to cnad, ordain, and establish, And be it enaced, ordained, and established by the Authority a forefaid, That in the Town of Hallingbury otherwife called Hallingbury Bouchers in the County of Effex, there may be builded and created (at the Colts and Charges of pour Suppliant) one meet, fit and combenient Boufe, Buildings, and Rooms for the Abiding and Dwelling of fuch Rumber of poor People, Pen and Chilozen, as pour Suppliant thall name, limit and appoint to be look ed, harboured, abide, and be relieved there, And for the Abiding, Dwelling, and necessary Ale of one School matter and Ather to instructhe faid Chilozen in Read ing, Writing, and Latin and Greek Brammar, and of one Divine and gooly Preacher to instruct and teach all the rest of the same Bouse in the knowledge of God and his Word, And of one Patter to govern all these Persons of, in, og belonging unto the fame Doufe, And that the fame thall and may be called and named the Pospital of thing James, founded in Hallingbury in the County of Effex, at the humble Petition and at the only Colls and Charges of Thomas Sutton Esquire, And that the Right Reverend Kather in God Richard, now Archbishop of Canterbury, and his Successors Archbishops there, Thomas Lozd Ellesmere Lozd Chancelloz of England, and fuch as after him shall succeed to be Lord Thancellors of Lozd Recpers of the Great Seal of England, for and buring the Aime they shall so continue or be in the same Office. Robert Carl of Salisbury Lozd high Arcasurer of England, and such as after him shall succeed to be Lozd Treasurers of England, for and on ring the Time they that continue or be in the fame Dice, The Reverend Father in God Launcelot, Bi thop of Ely and his Successors Withops there, Richard Bishop of Rochester and Dean of the Cathedral Churc of Westminster and his Successors of and in the sam Deanry of Westminster, Sir Thomas Foster unight one of the Justices of your Pajetty's Court of Com mon Pleas usually holden at Westminster, Sir Henr Hobart Anight, your Pajefty's Attorney General

John Overal Doctoz of Divinity, Dean of the Cathedzal Church of Saint Paul in London and his Successors Deans there, Henry Thursby Esquire one of the Walters of your Pajetty's Court of Chancery, Thoma Fortescue, Thomas Paget, Geffery Nightingale and Richard Sutton Esquires, John Lawe and Thomas Browne Gentlemen. and such others as thall be from Time to Time for ever hereafter chosen and nominated in and to the Places and Steads of fuch of them as thall deceafe by your Suppliant during his Life, And after his Decease by the most Part of them which then thall be Governozs of the faid Hospis tal, to be and succeed in and to the Place and Places of him and them Deceasing, thall and may be the Govermoss of the said Pospital and of the Pembers, Goods, Lands, Revenues and Pereditaments of the same at all Times hereafter for ever, And that the same Governors and Hospital shall for ever hereafter stand and be incorposated, established, and founded in Pame and in Deed a Body politick and corporate, to have Continuance for ever, by the Pame of the Governozs of the Hospital of king James, founded in Hallingbury in the County of Effex, at the humble Petition and at the only Colls and Charges of Thomas Sutton Esquire, and that they the aid Governozs may have a perpetual Succession, and that by that Name they and their Successors may for ther hereafter have, hold, and enjoy the Panozs, Lozda, hips, Petuages, Lands, Tenements and Pereditas ments hereafter mentioned, without any Licence oz Darbon for any Alienation of them or any of them. mo without any Licence of 02 for Doztmain, or any other Law oz Statute to the contrary notwithstanding, That is to fay, your Suppliant's Panoes and Loed-hips of Southminster, Norton, Little Hallingbury alias Hallingbury Bouchers, and Much Stambridge in the county of Effex, with all their and every of their Kights, Dembers, and Appurtenances whatfoever, And also all hole your Suppliant's Panoes and Loedihips of Bufgthorpe and Dunnesbye in the County of Lincoln with heir and either of their Kights, Hembers, and Apartenances whatsoever, and also all those your Supliant's Panors of Salthope alias Saltrop, Chilton and Blackgrove with their and every of their Kig its, Demers and Appurtenances in the faid County of Wilts, and also all those your Suppliant's Lands and Pautics Excunds called Blackgrove, containing by Estimation two

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two hundred Acres of Pasture, with the Appurtenances in Blackgrove and Wroughton in the fair County of Wilts, And also all that your Suppliant's Panoz of Mihenden, of the wife called the Panoz of Mihunden in the Parishes of Wroughton, Lydgerd and Tregoce in the faid County of Wilts, And all that your Suppliant's Panoz of Elcombe, and the Park called Elcombe Park in the fait County of Wilts, And all that your Suppliant's Pano; of Wattlescore, otherwise called Wigglescore, otherwise called Wiglescere, otherwise called Wikelscete, in the County of Wilts, And all that your Suppliant's Pano; of Wescote, other wise called Wescete with the Appurter nances in the said Ocunty of Wists, And also all those pour Suppliant's Lands and Pastures, containing by Co Atimation one hundred Acres of Land, and threescore Acres of Pasture in Wiglescore and Wroughton in the said County of Wiles, And also all that your Suppliant's Pas 1102 of Uffcore with the Appurtenances in the faid County of Wilts, And all those your Suppliant's two Delfuages and one thousand Acres of Land, two thousand Acres of Patture, three hundred Acres of Peadow, and three hundred Acres of Wlood with the Appurtenances in Brodehinton in the faid Councy of Wilts, And also all those your Suppliant's Panoes and Loedhips of Campes, otherwise called Compes, otherwise called Campes Castle; otherwise called Castle Campes, Atuate, lying, being and extending in the Counties of Cambridge and Essex, 02 in either of them, or elsewhere within the Realm of Bogland, And also all that your Suppliant's Panor of Balsham in the County of Cambridge, with all and singu lar the Kights, Hembers and Appurtenances thereof whatfoever, And also all that your Suppliant's Welluage and Lands lituate and being in the Warishes of Hackney and Tottenham in the Countr of Middlesex, or in either of them with their and either of their Rights, Dembers and Appurtenances whatfoever, which faid Pelluage wis lately purchased of Sir William Bowyer unt. and the Lands in Tottenham new oz late in the Tenure of Decupation of Will. Benning Deoman, and also all and un gular the Pano2s, Lozospips, Pestuages, Lands, Tenements, Reversions, Services, Peadolds, Pastures, Woods, Advoirsons, Patronages of Churches, and Pereditaments of your Suppliant whatsoever lituate lying og being within

within the faid Counties of Effex, Lincoln, Wilts, Cambridge, and Middlefex, oz any of them, with all and every their Kights, Pembers, and Appurtenances what-soever: And also all your Suppliant's Letters Patents, Inventures, Deeds, Evidences, Bonds and Writings concerning the Premisses, or any of them, And all such Conditions, Warranties, Mouchers, Actions, Suits, Entries, Benefits, and Demands as thall or may be had by any Person of Persons, upon of by Reason of them of any of them, except those your Suppliant's Pano2s 02 Lorothips of Littlebury and Haditocke in the faid County of Effex: And except all your Suppliant's Lands, Tes nements and Dereditaments in Littlebury and Hadfocke afozefaid, oz in either of them, And that the faid Governois and their Successors by the same shall and may have Power, Ability, and Capacity, to demise, lease, and grant their Possessions and Pereditaments, and every of them, And to take, acquire, and purchale, and to fue and be fued, And to do, perform, and eres mte all and every other lawful Ad and Thing, good, necessary and profitable for the said Incorporation, in as full and ample Panner and Form to all Intents, Confructions, and Purpoles, as any other Incorporations or Body politick or corporate, fully and perfectly found in and incorporated, may do, And that the same Bobers nors and their Successors for the Time being may have and use a common Seal for the Paking, Granting, and Demiling of luch their Demiles and Leafes, and by the boing of all and every other Thing touching, 02 in any wife concerning the said Incorporation, In which Seal thall be ingraven the Arms of the said Thomas Sutton your Suppliant: And also that it may he further enacted by the Authority aforesaid, and be it maged by the Authority aforesaid, that your Suppliant during his Life, and the said Governozs and their duccessors sor the Time being, or the most Part of them, after his Decease thall and may have full Power and lawful Authority to break, after and change the faid deal: And that your faid Deator during his Life, and e laid Governozs and their Successozs foz the Time being, 02 the most Part of them, after his Decease, shall mo may have full Power and Authority to nominate and appoint, and shall and may nominate and appoint. hen and as often as he and they thall think good, such Person and Persons as he and they shall think meet to be

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Wafter, Preacher, School-matter, Alber, poor Pen, poor Children, and Micers of the fair Polpital, And when any of them by Death, Relignation, Depairation, or otherwise, shall become void, shall and may within one Ponth nert after such Aboidance, by Writing under their faid common Seal, nominate and appoint one or more learned, godly. Difcreet and meet Den and Berfons o be Palter, Pzeacher, School-malter, Alher, pooz Den, pooz Childzen, and Officers in the Places of them and every of them to Deceating, Religning, or otherwise becoming boid, And that in Case the faib Governors and their Successors for the Time being, or the most Bart of them, thall not within one Ponth after such Aboid ance make fuch Pomination and Appointment as afores faid, That then, and so often, and in every such Case, from and after the Decease of your said Deatoe, it shall and may be lawful to your Pajetty, your Peirs and Successors, by your Letters Patents under the Great Seal of England, to nominate and appoint some meet, godly and learned Den in and to the Places boid, by fuch Default of the said Governozs and their Successozs for the Time being, or the most Part of them as is afores faid: And that it shall and may be lawful to and for the said Patter, Pzeacher, School master, Asher, poor People, poor Chiloren, and Officers of the said Hospital to remain, assemble, be and cohabit together in the said Poule, Buildings, and Pospital: And that it may be further enaced by the Authority aforefaid, And be it en acted by the Authority aforesaid, That your said Suppliant buring his Life, and that the faid Governozs and their Successors for the Time being, or the most Part of them, after his Decease, thall and may have full Power and Authority, under the faid common Seal, to make, ozdain, set down, and prescribe such Kules, Statutes, and Dedinances for the Deder, Rule, and Government of the said Hospital, and of the said Paster, Pzeacher, School matter, Ather, poor Den, poor Chilozen, and Officers, and their Successors, and for their and every of their Stipends and Allowances, for or towards their or any of their Paintenance and Kelief, as to your faid Suppliant during his Life, and the faid Govern nozs and their Successors for the Time being, or the most Part of them, after his Deceafe, shall feem meet and convenient, And that the same Diders, Kules, Statutes, and Dedinances to by him, them, or any of them made, let

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teli fors noing, and prescribed as aforesaid, thall be and fland in full force and Strength in Law, the fame not being repuguant not contrary to your Pajelly's Perogative Royal, not to the Laws of Statutes of this your Pajelly's jelly's Realm of England, not to any Ecclesiatrical Canons of Constitutions of the Church of England then in force and Wie: And that your Suppliant during his Life, and the faid Gobernozs and their Successozs for the Time being, or the most Part of them, and such of them as your Suppliant that thereto appoint and nominate, shall and may, after the Decease of your said Suppliant, have Power and Authority to visit the said Holpital, and to order, reform, and redress all Disorders and Abuses in and touching the Government and dispofing of the fame, And further to censure, suspend and des prive the faid Patter, Preacher, School matter, Ather, 1002 Ben, pooz Childzen, and Diacers foz the Time bes ing, and every or any of them, as to him and them thall frem juff, fit, and convenient, So always that no Wifetation, Act or Thing in or Touching the same, be had. made, or done other than by your Suppliant during his Life, or the fato Gevernors and their Successors for the Time being, or the most part of them after his Deceafe, or by such of them as your Suppliant Hall thereunto no minate and appoint: And also, that it may be surther enaded by the Authority aforesaid, And be it enaded by the Authority aforesaid, That the said Preach er and Minister of the Wood of God, which shall be placed in the faid Pospital to and for the Wies and Pours poles aforelato, from Time to Time hereafter thall and may enter into, have, hold, and enjoy the Rectory and Parsonage of Hallingbury afozesaid, in and to his own proper Afe and Behoof, for and during fo long Dime as he thall be Pzeacher and Pinister there, without any other Pzesentation or Admission, Institution, or Induction, and that no Lease shall hereafter be made of the lato Parsonage, or of any Part or Portion thereof, other than fuch as thall determine and end when and as foon as any such Person as shall be the Persacher or Minister of and in the faid Pospital, when the same Lease thail be made, thall decease or rough, leave or be put out and removed from his faid blace of Peacher of Wis lifter of and in the faid Hospital, Saving always and telerbing to your Pajetty, your Beirs and Succel los and to all and every other Person and Persons, modies.

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Bodies politick and coppopate, their Beirs and Succes fors, other than your Suppliant and his Peirs, and the Derson and Persons from whom the same were purchafed and their Heirs claiming only as Heirs, all such E. state, Right, Title, Condition, Claim, Possesson. Ments, Services, Commons, Demands, Action's, Remedies, Recoveries, Terms, Interests, Forfeits, Commodities, Advantages and Pereditaments whatsoever, which they or any of them shall or may have, or of Right ought to have, of, in, to, or out of the Premisses, or as ny of them, oz any Part thereof, as if this Ad had nes ver been had or made, Other than Fine or Fines of or for any Alienation of the Premisses or any Part or Parcel thereof, And other than Respits of Homage, or Fines for Pon-payment of Respite of Homage, at any Time hereafter to be demander, And other than Title and Right of Liberty 02 Liberties to enter into the same, 02 any of them, for or by Reason of any Statute heretofore made foz, concerning, oz against any Alienation oz Moztmain prout per eundem actum inter alia plenius ap-

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Et ulterius Jur. prædict. dicunt super sacramentum suum prædictum, quod Thomas adtunc & modo Comes Suff. Dominus Camerarius Hospitii Domini Regis, ante præd. tempus quo, &c. fuit seisit. de & in quodam capital. messuag. five manfional, domo communiter vocat, five cognit, per nomen de Howard house, aliter voc. The late dittolbed Charter-house belides Smithfield, scituat. & existen. in com. Midd. cum omnibus & fingulis juribus, membris, & pertinentiis adinde spectan. & pertinen'; ac de toto illo horreo & gardino cum pertinentiis adinde similiter spectan. & pertinen'; ac de & in tota ill. parcell. terræ cum pertinentiis communit. vocat. Pardon Church pard; ac de omnibus illis duobus messuagiis sive tenementis & duobus clausis terr. cum pertinentiis adinde adjungen', communit. vocat. Tal beche, scituat. jacen. & existen. in dicto comitat. Midd', unde prædict. capital. messuag. cum pertinentiis in narratione prædicta mentionat. est & prædicto tempore quo supponitur tranfgr. prædict. superius fieri, necnon a tempore cujus contrarii memoria hominum non existit fuit parcell', in dominico suo ut de feodo; & sic inde feisit. existen, idem modo Comes Suff. ante præd. tempus quo, &c. scilicet, nono die Maii anno regni dom. Jacobi nunc regis Angliæ nono, apud Westmonast. in comitat. Midd. per quandam Indentur. suam inter ipsum modo Comit. per nomen prænobilis Thoma comitis Suff. dom. Camerarii honorabilis hospitii Dom. Regis,& quoidam

quosdam Theophilum dominum Howard filium & hæred. apparen. dicti comitis Suff. & Thomam comitem Arundel & Surr', & Willielmum dominum Howard de Nawarde in comitatu Cumbr. ex una parte, & præfat. Thomam Sutton per nomen Thomæ Sutton de Balsham in comitatu Cantabrig, armigeri ex altera parte factam; ac infra fex menses tunc proxim. sequen, in cur. dicti dom. regis nunc de communi banco apud Westm. prædict. tunc existen', debit. modo de recordo irrotulat. secundum formam statuti in hujusmodi casu edit. & provis. ac cujus una pars tam sigill. prædict. Thomæ modo comitis Suff. quam figill. prædict. Theophili domini Howard, Thomæ comitis Arundel & Surr', Willielmi domini Howard fignat', Jurat. prædict. in evidenciis ostens. fuit geren dat. eisdem die & anno, pro & in consideratione summæ tresdecim mille librarum legalis monetæ Angliæ per eundem Thomam Sutton præfat. Thom. com. Suff. in manibus folut', barganizavit & vendidit omnia & fingula præmissa cum pertinentis, existen. vocat. The late billolbed Charter-house besides Smithfield, in præd. comitatu Midd. unde, &c. eidem Thomæ Sutton, habend. & tenend. sibi & hæredibus suis imperpetuum, ad solum opus & usum ejusdem Thomæ hæred. & assign. suorum imperpetuum, cujus quidem Indenturæ tenor sequitur in hæc verba. This Indenture made the ninth Day of May in the ninth Pear of the Keign of our Sovereign Lozd James by the Brace of God King of England, France and Ireland. Defender of the Fatth, &c. and of Scotland the four and fortieth, between the Kight Honourable Thomas Earl of Suffolk, Lozd Chamberlain of the King's Pajesty's most Honourable Houshold, The Right Honourable Theophihis Loed Howard Son and Heir apparent of the faid Earl of Suffolk, The Right Honourable Thomas Earl of Arunfundel and Surrey, And the Kight Honourable William Lord Howard of Naward in the County of Cumberland on the one Warty, and Thomas Sutton of Balsham in the County of Cambridge Esq; on the other Party, witnesseth, that the faid Right Ponourable Thomas Earl of Suffolk, Theophilus Lo20 Howard, Thomas Carl of Arundel and Surrey, and William Lord Howard, for and in Consideration of the Sum of thirteen thousand Pounds of good and lawful Poncy of England, to the said Thomas Earl of Suffolk in Hand before the Sealing and Delivery of these Presents by the said Thomas Sutton well and truly satisfied, cons lented and payed, whereof and wherewith they and ebes y of them acknowledge themselves fully satisfied, con-

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tented, and paid, and thereof and of every Part and Parcel thereof do clearly acquit, exonerate, and Discharge the faid Thomas Sutton, his Beirs, Crecutors, and Ab ministracors, and every of them for ever by these Ades fents, have granted, aliened, bargained, fold, conveysed, and confirmed, and by these Paelents do for them and their Beirs fully, clearly, and absolutely grant, as lien, bargain, fell, convey, and confirm unto the faid Thomas Sutton his Peirs and Affigns for ever, all that capital Delluage oz Pansion house, commonly called 02 known by the Pame of Howard-house, otherwise called the late billolved Charter-house besides Smithfield, stie trate and being within the County of Middlefex, with all and lingular the Rights, Pembers, and Appurter nances thereunto belonging and appertaining, And all that Dichard and Garden with the Appurtenances thereunto likewife belonging and appertaining, and all that Parcel of Land and Ground with the Appurtenances commonly called Pardon Church-yard, And all those two Peduages of Tenements and two Closes of Land and Ground with the Appurtenances thereunto adjoins ing, commonly called Welbeche, scituate, lying, and bes ing in the faid County of Middlesex, And also all and fingular Peffuages, Houses, Coifices, Buildings, Barns, Stables, Dobe houses, Courts, Folds, Curtilages, Bards, Dechards, Gardens, Shops, Sellars, Sollers, Closes, Inclosures, Malte Geounds, Tithes, Oblations, Obbentions, Fruits, Profits, Alterages, Ways, Waters, Ments, Reverlions, Services, Wlaifs, Strays, Goods of Felons, Dutlaws and Augitives, and all other Frank chifes, Liberties, paivileges, Jurisdictions, Paofits, C: moluments, Commodities, Pereditaments, and Appurtenances whatsoever, by what Pame or Pames soever the fame be called or known, to the faid capital Defluage or Mantionshouse called Howard-house, or the late dissol bed Charter-house besides Smithfield, and other the before mentioned Pzemilles, and to every oz any of them lying, belonging, or in any wife appertaining, or to or with the fame, every, oz any of them usually held, occupied, or enjoyed, or accepted, reputed, taken, known, demised, used, or letten as Part, Parcel or Bember of them, or any of them, And also the Reversion and Reversions, Remainder and Remainders whatfoever of all and lingular the Premises with the Appurtenances, And all Kents and yearly Profits whatfoever referved upon any De

mife, Leafe, Effate, 02 grant, Demiles, Leafes, Effates, oz Bzants, heretofoze made oz granted of the befoze mentioned Premittes, or of any part of Parcel thereof: And also all the Estate, Right, Title, Interest, Mse, Possession, Reversion, Remainder, Claim, and Demaind whatsoever of them the said Thomas Earl of Suffolk, Theophilus Lo2d Howard, Thomas Earl of Arundel and Surrey, and William Load Howard, and of every of them, of, in oz unto the faid capital Deffuage oz Dans sion house, commonly called Howard-house, 02 the late dissolved Charter-house besides Smithfield, And other the befoze-mentioned Pzemisses, oz of, in, oz unto every oz any Bart or Barcel thereof, And further the faid Right Honourable Tho. Carl of Suffolk, Theoph. 1020 Howard. Thomas Carl of Arundel and Surrey, and William Lozd Howard, for the Considerations aforesaid, have granted, bargained, and fold, and by thefe Peefents do grant. bargain, and fell unto the faid Thomas Sutton, his Beirs and Assigns for ever, All and every the Deeds, Evidences, Charters, Whitings, Counterpaines of Lease and Leases, Indentures, Cremplifications, Letters Patents, Transcripts of Fines and Recoveries, Terrers. Court-Rolls, Surveys, Presentments, Boundaries, Ewife only concerning the said capital Pessuage of Pantion-house, and other and before-mentioned Premisses, or any Part of Parcel thereof only: To have and to hold the faid capital Bestuage of Pantion-house called Howardhouse, or the late dissolved Charter-house besides Smith-field, Poules, Buildings, Drchards, Gardens, Closes, Inclosures, Aenements, and Hereditaments, and all o ther the Premisses before, in, or by these Presents bars gained and fold, oz mentioned, intended, and meant to be bargained and fold, and every Part and Parcel thereof with the Appurtenances unto the faid Thomas Sutton, his Heirs and Affigns for ever, To the fole, only, and proper Use and Behoof of him the said Thomas Sutton, his Heirs and Affigns for evermore absolutely, without any Manner of Condition, Redemption of Revocation in any wife, And the said Tho. Carl of Suffolk, and his Heirs, the faid capital Melluage of Manlion-house called Howardhouse, or the Charter-house, and all and singular other the before-mentioned Premisses, with all their and every of their Appurtenances, and every Part and Parcel thereof, unto the laid T. Sutton, his Peirs and Amgus foz ever, in Manner and Foam afozesaid, against him the said Tho. Earl of Suffolk, and his Heirs, and all and every other person and Persons lawfully claiming by, from, or under mn, thall and will warrant and for evermore defend by

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these Presents: And the said Theophilus Lord Howard and his Beirs the faid capital Deliuage or Pantion-house called Howard-house, 02 the Charter-house, And all and fingular other the befoze-mentioned Pzemilles and every Part and Parcel thereof with the Appurtenances, unto the faid Thomas Sucton, his Beirs and Aff gns for rber in Panner and Form aforesaid, against him the said Theophilus Lord Howard and his Heirs, and all and ever ry other Person and Persons lawfully claiming by, from. oz under him, thall and will warrant and foz evermoze Defend by these Presents: And the said Thomas Carl of Arundel and Surrey and his Beirs the faid capital Def fuage oz Pantion house called Howard-house, oz the Charter-house, And all and lingular other the before men tioned Premisses, and every Part and Parcel thereof with the Appurtenances, unto the faid Thomas Sutton his Beirs and Asigns for ever, in Fanner and Form as forefaid, against him the faid Thomas Carl of Arundel and Surrey and his Beirs, And all and every other pers fon and Persons lawfully claiming by, from, or under him, shall and will warrant and sor evermore deserb by these Pzesents: And the said William Lozd Howard and his Heirs the faid capital Meduage of Mansion-house called Howard-house, oz the Charter-house, and all and fingular other the before-mentioned Premittes, and every Part and Parcel thereof with the Appurtenances, unto the faid Thomas Sutton his Heirs and Affigns foz ebet, in Banner and Form aforesaid against him the said William Lord Howard and his Heirs, and all and every of ther Person and Persons lawfully claiming by, from, or under him, shall and will warrant and foz ever defend by these Presents: In Witness whereof the Parties above named to these present Indentures interchangeably have set their Pands and Seals the Day and Pear first above weitten 1611. prout per eandem Indenturam, dat. ut prædicitur plenius apparet. Que omnia & fingula premissa per Indentur. præd. in forma præd. barganizat. cognoscunt. & vulgariter appellantur & tempore barganiæ præd. cognoscebantur per nomen of the late distolved Charter house bes fibes Smithfield.

Quorum quidem barganiæ, venditionis, & irrotulament, prædict. prætextu, necnon vigore cujusdam actus in patliamento domini Henrici nuper regis Angliæ octavi apud Westmonasterium prædictum, quarto die Februarii anno regni sui vicesimo septimo, de usibus in possessionen transferend. tent. edit. & provis. idem Thomas Sutton in omnia & singula præmissa barganizat. vocat. the late

nissed Charter-house besides Smithsield, cum pertinunde, &c. intravit, & suit inde seissit. in dominico suo ut de seodo; & sic inde seissit. existen', dom. Jacobus nunc Rex Angliz, postea & ante prædictum tempus quo, &c. scilicet vicesimo secundo die Junii an. regni dicti domini Regis nunc Angliz, &c. nono supradicto, apud Westmon. prædict. secit quasdam literas suas patentes magno sigillo suo Angliz sigill', ac Jur' prædictis in evidenc. ostens. quarum tenor se-

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James by the Brace of God king of England, Scotland, France and Ireland, Defender of the Saith, &c. To all to whom these Pzesents thall come greeting. Whereas at the last Session of Parliament last past, one Ac was made and passed, intituled, An Act to confirm and enable the Crection and Cstablishment of an Pospital, a free Grammar School, and sundry other godly and charitable Ads and Ales, done and intended to be done and performed by Thomas Sutton Clautre, As by the same At of Parliament moze at large it both and may appear: And whereas, lithence the faid Art, the faid Thomas Sutton hath purchased to him and his Heirs of our right trus ty and well beloved Coulin and Counselloz Thomas Earl of Suffolk Lozd Chamberlain of our Houshold a great and large Mansion-house, commonly called the late disfolded Charter-house besides Smithsield, together with dis vers Houses, Buildings, Courts, Pards, Gardens, D20 chards. Closes, and other Pereditaments to 02 with the same Bansion-house used or enjoyed, or reputed as Part, Parcel, Wember, 02 belonging thereunto within our county of Middlesex, which Wanton house and other the Demisses the said Thomas Sutton doth conceive to be a moze fit and commodious House and place, to place, to ted, and found the faid Pospital and Free-School, and other the godly and charitable Ales afozefaid than in Hallingbury alias Hallingbury Bowchers in the said Ad mens honed, And to that End the said Thomas Sutton hath been an humble Suitoz unto us, That we would be gras tiously pleased to give Licence, Power, and Authority unto him the said Thomas Sutton, to found, eren, and Mablish an Hospital and Free-School, and other the poly and charitable Uses by him intended, in the said soule called the late dissolved Charter-house belides Smithfield in the said Premisses in our said County of Middlesex, And to incorporate the Governors of the same reafter named, to be a Body corporate and Politick, and have perpetual Succession for over in Fact, Deed, and Pame,

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Dame, And by fuch Pame of Incorporation as is beres after mentioned to have full Authority and lawful Capacity and Ability to purchase, take, hold, receive, and have to them and their Successors sor ever, Canors, Lands, Tenements, Tithes, Kents, Reversions, Annuities, Pensions, Pereditaments, Goods, and Chattels whatfoever, as well of us our Beirs and Successors, as of any other Person and Persons whatsoever, for the better Paintenance of the said Pospital, Free-School, and other the godly and charitable Ales afozefaid: know pe therefore, That we gracionly affecting so good and charitable a Work, of our princely Disposition and Care to the Furtherance thereof, and of our especial Grace, certain knowledge, and meer Motion, have given, granted, and confirmed, And by thefe Pzefents do gibe, grant, and confirm, for Us, our Beirs and Successors. unto the faid Thomas Sutton, his Beirs, Crecutors, Ad ministrators, and Assigns, and to every of them, full Cower, Licence, and lawful Authority, at all Times bereafter at his and their Will and Pleafure, to place. ered, found, and establish at oz in the faid Bouse called the late discited Charter-house besides Smithfield, and other the Premiss within our faid County of Middlefex, one Pospital, Pouse, or Place of Abiding for the Kinding, Sustentation, and Relief of poor, aged, maimed, necby, or impotent People, As also that the said Thomas Sutton, during his Life, and after his Death the Gover nozs hereafter named and their Successozs, and the Sur vivozs and Survivoz of them and his and their Success fors for ever, And the Bovernors thereof for the Time being, and their Successors, thall have full Power, Li cence, and lawful Authority, at his and their Wills and Pleasures respectively, from Time to Time and at all Times hereafter, to place therein such Pafter or Deal of the said Hospital, and Pumbers of poor People, Ben and Childzen, and luch other Dembers and Officers of the faid Despital, as to him the faid Thomas Sutton, du ring his Life, and after his Death to the faid Governou and their Successors, and to the Survivors and Survivo of them, and to his and their Successors, and to the Gove nozs thereof for the Time being and their Successors, that feem convenient, And further we, of our faid efpett Brace, certain knowledge, and meer Botion, have give granted, and confirmed, And by these Paesents do gib grant, and confirm, for dis our Beirs and Successors, un the faid Tho. Sutton, his Heirs, Executors, Administratog and Aftigus, and to every of them, at his and their dil and Pleasures, full Power, Licence, and lawful Author

at all Times hereafter, to place, ered, found, and elfablith, at or in the said House called the late distolped Charter-house belides Smithfield, and other the Bzemis les in our said County of Middlesex, one free School for the Instructing, Teaching, Paintenance, and Education of poor Children or Scholars, And that the said Thomas Surton during his Life, and after his Decease the Governozs hereafter named, and their Successozs, and the Survivors and Survivor of them and his and their Successors for ever, And the Bobernors of the faid Dospital for the Time being and their Surcessors, shall have full Power, Licence, and lawful Authozity, at his of their Wills and Pleasures, from Time to Time and at all Times hereafter, to place therein such Pumbers of poor Children or Scholars, as to him the said Thomas Sutton during his Life, and after his Death to the said Governozs and their Successozs, and to the Survivozs and Survivoz of them and his and their Successors, and to the Bovernozs of the said Hospital for the Time being, and their Successors, shall feem convenient; And likewise one learned, able, and sufficient Person, to be School matter of the faid School, and one other learned, able, and sufficient person to be Asher thereof to teach and instruct the said Children in Grammar, And also one learned and gooly Preacher to preach and teach the Moed of God to all the faid Perfons, poor People, and Childzen, Pembers and Officers, at oz in the said Boule: And further we, of our faid especial Grace, certain knowledge, and meer Potion, have ordained, conlituted, affigned, limited, and appointed, And by these Prefents for Us our Deirs and Successors do ordain, constitute, affign, limit, and appoint, that the said house and other the Permisses, shall from hencesoth to ever hereafter be, remain and continue, and be conberted, imployed, and used for an Pospital and Pouse and Place for the Abiding, Divelling, Sustentation, and Relief of such Kumbers of poor People, Wen and Children, as the faid Thomas Sutton During his Life, and after his Death the Governors hereafter named and heir Successors, and the Survivors and Survivor of hem and his and their Succellors, And all and every he Governors of the faid Pospital for the Time be-ing and their Succellors, thall name, askin, limit, pappoint to be lodged, harboured, abide, and to be maintained and relieved there, And for the Abiding, Dwelling, Sultentation, and Aclief of such Aumbers of 1902 Childzen as the said Thomas Sutton during his Life, no after his Death the Governors hereafter named

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The Case of Sutton's Hospital. PART X. and their Successors, and the Survivors and Survivor of them and his and their Successors, and the Gover: nozs of the faid Hospital for the Time being and their Successors, that from Dime to Dime name, align, li mit, or appoint to be longed, harboured, abide, and to be maintained and relieved there, And for the Abiding, Mivelling, Sustentation, and Finding of one School, master, one Asper, and one Preacher as is assessaid, and of one Bead or Halter of the said Boule and Hospi tal; And that it shall and may be lawful to and for the said Paster, Pzeacher, School master, Asher, poo; People, Childzen, Wembers, and Officers of the said Pospital, oz therein to be placed, foz the Lime being, to astemble, be, remain, abide, and cohabit together in the said Pospital, And that the said Pospital shall foz ever hereafter be incorporated, named, and called, The Hospital of King James, founded in the Charter-house within the County of Middlesex, at the humble Petition and only Cofts and Charges of Thomas Sutton Esquire, And the fame Pospital and free School by the Pame of the Ho spital of Bing James, founded in the Charter-house within the County of Middlesex, at the humble Petition and only Costs and Charges of Thomas Sutton Esquire, We do firmly by these Pzesents, for Us our Heirs and Suc ceffoes erect, found, establish, and consirm to have Continuance for ever: And for the better Paintenance and Continuance of the faid Hospital and free School and the faid godly and charitable Ales, Intents, and Purpoles, and that the same may have and take the better Effec, And that all and every the Panoes, Lands, Tenements, Rents, Revertions, Services, and Pereditaments, Ments, Reversions, Dervices, and Pereditaments, Boods and Chattels to be given, granted, conveyed, affigued, devised, willed, limited, or appointed for the Merson Maintenance, Sustentation, and Kelief of the Persons afozefaid in the same Hospital, may be the better go verned, used, imployed, and bestowed for the Painte nance of the Persons in the said Pospital for the Time being to have Continuance sor ever, we will and ordain, and do appoint, askgn, limit, and name And for Us our Peirs and Successors do grant, an ordain by these Presents, That there thall be so ever hereaster sixteen Persons which shall be called Bobernozs of the Lands, Pollettons, Revenues, an Goods of the Hospital of King James, founded ! the Charter-house within the County of Middlesex, the humble Petition and only Costs and Charges Tho. Sutton Efq; and for that Durpole we have clear nominated, ozdained, affigned, constituted, limited, a appoint

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appointed, And by these Presents do for Us our Heirs and Successors elect, nominate, ordain, asign, consti inte, limit and appoint the Kight Reverend Father in Goo George, now Archbilhop of Canterbury, our right trulty and well beloved Coulin and Councerloz Thomas Lozd Ellesmere Lozd Chancelloz of England, our right trulty and well beloved Coulin and Councelloz Robert Carl of Salisbury Lozd Digh Treasurer of England, John the elect Bithop of London, Launcelot now Bithop of Ely, Sir Edward Coke Anight, Chief Juffice of Common Pleas, Sir Thomas Poster Bright, one of our Justices of our Court of Common Pleas, Sir Henry Hobart Unight and Baronet our Attorney General, John Overal now Dean of the Cathedral Church of St. Paul in London, George Mountaine Dean of the collegiate Church of Westminster, Henry Thursby Clauire, one of the Patters of our Court of Chancery, Geffery Nightingale Esquire, Richard Sutton Chaure, John Law Gens theman, Thomas Brown Gentleman, and the Walter of the Hospital of King James, founded in the Charter-house within the County of Middlesex, at the humble Petition and only Colls and Charges of Thomas Sutton Cig; and hin Person and Persons as Mall from Time to Time be Paster of Pasters of the said Pospital so, and vuring such Time as they that be Paster of Pasters thereof, to the first and present Governors of the Lands, Pos ellons, Revenues, and Goods of the Pospital of Ling lames, founded in the Charter-house within the County of Middlesex, at the humble Petition and only Costs and tharges of Thomas Surron Esquire, and that they and the Survivors of them, and such as the Survivors and purvivoz of them Hall from Time to Time elect and when and as of m as any of them or any of their Successors shall happen decease, of he removed from being Governors of Bos emoz thereof, thall be incorporated and have a perpetual accession for ever in Deed, Fait, and Name, And Hall cone Body corporate and politick, and that the faid Werand their Successors, and the Survivers and Survie fo of them and his and their Successors, and such as thall eleded and chosen to sucreed them as asozesaid, shall be morpozated, named, and called by the Pame of the Gos mors of the Lands, Possessions, Revenues, and Goods the Pospital of Ling James, founded in the Chartered i this and only Costs and Chaiges of Thomas Suction wire, And them by the Panie of the Governozs of the o, at

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The Case of Sutton's Hospital. PART X. Lands, Possessions, Revenues and Goods of the Pospital of Bing James, founded in the Charter-house within the County of Middlesex, at the humble Petition and only Costs and Charges of Thomas Sutton Esq; one Body to: pozate and politick by that Pame to have perpetual Suc ression for ever to endure, Wie bo by these Presents for us our Deirs and Successors really and fully in corporate, make, erea, ordain, name, constitute, and establish, and that by the same Pame of the Governors of the Lands, Possessons, Revenues, and Goods of the Hospital of King James, founded in the Charter-house mith in the County of Midd. at the humble Petition and only Costs and Charges of Thomas Sucton Esquire, they and their Successors, and Survivors and Survivor of them and his and their Successors, and the Persons to be es leded and thosen as afozesaid, thall for ever hereafter be incorporated, named, and called, and thall by the fame Rame have perpetual Succession foz ever, and that they by the same pame be, and thall be and continue per fons able and capable in the Law from Time to Time and Mall by that Pame of Incorporation have ful Power, Authority, and lawful Capacity and Ability to purchase, take, hold, receive, enjoy, and have to then and their Successors for ever, as well Boods and Chat tels, as Pano2s, Lands, Tenements, Kents, Reber fions, Annuities and Pereditaments whatfoever, as we of us our heirs and Successors, as of the said Thomasucton his Heirs, Crecutors and Assgus, or any othe Person or Persons whatsoever, and also that the said Governors sor the Time being and their Successor Mall have full Power, and lawful Authority by the foresaid Pame of Governors of the Lands, Possession Revenues, and Goods of the Pospital of Ling Jam founded in the Charter-house within the County of Midd. the humble Petition and only Colks and Charges Thomas Sutton Esquire, to sue and to be sued, imple and to be impleaded, to answer and to be answered with all Panner of Courts and Places that now are hereafter shall be within this our Realm of elsewhold as well temporal as spiritual, in all Panner of Su whatsoever, and of what Pature and kind soever l Suits or Actions be or thall be, in the same and ample Panner and Form to all Intents, Construction and Purposes as any other Person or Persons, dies politick or corporate of this our Realm of C verno28 land being able Persons in Law, may bo: And thermoze we will and grant by these Pzesents for our Peirs and Successozs unto the said Governors

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PART X. The Case of Sutton's Hospital.

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the Time being and their Successors, that they and their Successors thall have and enjoy for ever a common Seal, wherein thall be ingraven the Name and Arms of the said Thomas Sutton, whereby the same Corporation thall of may seal any Panner of Instrument touching the same Corporation, and the Panors, Lands, Tenes ments, Kents, Reversions, Annuities and Peredita-ments, Goods, Chattels and other Things thereunto belonging, or in any wife touching or concerning the same: peberthelefs it is our true Intent and Deaning, That the faid Bovernozs for the Time being and their Succes loss, not any of them, thall do of fuffer to be done, at any Time hereafter, any Act of Thing whereby of by Peans whereof any of the Pano2s, Lands, Tenements, Rents, Reverlions, Annuities, of Pereditaments of the faid Incorporation, or any Citate, Interest, Postession, or Property of or in the same, or any of them thall be conveyed, velted, or transferred in or to any other whatsoever contrary to the true Peaning hereof, other than by such Leases as are hereafter mentioned, And that in fuch Panner and Form as is hereafter expressed. and not otherwise, And that such Construction shall be made upon this Foundation and Incorporation, as thall be most beneficial and available for the Paintenance of the Pooz, and for the Repressing and Aboiding of all Ads and Devices to be invented of put in Arc contrary to the true Peaning of these Presents: And therefore our Will and Pleasure is, and so for Us our Heirs and Successors we do ordain, That the said Governors for the Time being or their Successors or any of them, shall not make any Leafe, Grant, Conveyance, or Citate of any the faid Pano2s, Lands, Tenements of Vereditaments which thall erceed the Bumber of one and twenty Pears, and that either in Possession, or not above two Pears before the End and Expiration or Determination of the Estate or Estates in Postesion, And whereupon the accustomable yearly Kent or more by the greater Part of five Pears next befoze the Paking of any such lease reserved, due, or payable, shall not be reserved and rearly payable during the Continuance of every such leafe: And also we do ozdain, grant, and appoint by these Presents for Us our Peirs and Successors, That so Men and whensoever any one or more of the said Govern 1025 for the Time being, or any other Governor or Gobornozs that shall be chosen hereafter, shall fortune to depart

The Cafe of Sutton's Hospital. PART X. pepart this Life or to be remobed from his or their Blace of Governoz oz Governozs, That then and so often the Relidue of the said Bovernoz oz Governozs and their Succellors, Mall be, continue, and remain incorporate by the same Pame of the Governozs of the Lands, Pos festions, Revenues, and Goods of the Pospital of King James, founded in the Charter-house within the Countr of diddlesex, at the humble Petition and only Costs and Charges of Thomas Sutton Equire, to all Intents, Con-Arudions, and Purposes according to the true Deaming of these Presents, as if all the said Governor and Go versoes had continued; And that then and so often it shall be lawful for the rest of the Governors, or the great er Dumber of them, to elect, nominate, chuse, and apwhit one c2 moze meet Person of Persons, according to the true Intent and Peaning of these Pzesents, into the Room and Place of Rooms and Places of every such Covernoz oz Governozs-which thall fo bepart this Life or be removed, which Person and Persons to nominated, eleded, chosen, and agreed upon by the said Governozs. oz by the greater Rumber of them, thall be, and thall be reputed and taken from the Time of his og their & lection, to be from thenceforth together with the others, Governozs of the faid Hospital, And after this Panner to proceed whenfoever and as often as need thall require, And the same Cleation to be made within two Bonths that any of the said Governoz oz Governozs shall so depart this Life 02 be remobed: And that the faid Thomas Sutton during his Life, And after his Decease the said Go vernozs for the Time being or the more Part of them, Mall have full Power and Authority to nominate, affign, and appoint, and shall and may name, affign, and appoint, when and as often as he and they thall think good, fuch Pumber and Pumbers of Person and Persons as he and they thall think convenient to be poor Den, This been, and Scholars, Walter, Preacher, School-master, Ather, Dembers, Officer and Officers of 02 for the faid Pospital, as he the said Thomas Sutton during his Life, and after his Decease the Governors sor the Time being and their Successors, or the more part of them, thall think meet and convenient: Pevertheless if the Kents, Revenues, or Profits of all or any of the Panors, Lands, Tenements, and Pereditaments,

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Goods at Chattels, at any Time to be granted and conpeped to the said Governozs of the said Hospital and their Successors for the Paintenance of the People in the said Hospital, shall happen to encrease or to be raised or augmented to a better or greater yearly Walue than hamerly the same was, D2 that the Kents, Revenues, and Pollestions of the faid Pospital thall be further increased by the Determination of any former Cstates in any of the said Possessions of the said Pospital, or otherwise, That all and every such Encrease thall be employed ed to the Paintenance of moze and other poor Beople to be placed in the faid Pospital, oz to the further Augmens tation of the Allowances of those Persons that for the Time being thall be in the said Pospital according to the true Intent and Peaning of these Prefents, and that not be converted or imployed to any private Ale: And also we do by these Presents, for Us our Heirs and Succelloss, will, grant, and ozbain, That whenfoever and as often as any of the faid Places of Rooms of any of the said Patter, Preacher, School-master, or Ather, poor Pen, or Chiloren, Scholars, Pembers, or Offic ters, or any of them, thall happen to become both by Death, Relignation, Deprivation, or otherwise, That then and so often it shall and may be lawful for the faid Thomas Sucton During his Life, and after his Death by the said Governozs for the Time being and their Succellozs, or the most Part of them, within one Ponth after such Avoidance by Wiriting under the Seal of the laid Thomas Sutton during his Life, and after his Death by the faid Governozs for the Time being and their Succello2s under their common Seal, to nominate and aps point other meet Person and Persons in the Kooms, Place, and Places of them and every of them so veces ling, religning, or otherwise becoming boid: And if in Cale the said Governozs and their Successors for the Time being, or the most Part of them, thall not within two Ponths after such Avoidance, nominate, askgn, and appoint as is afozefaid, That then and so often and in every such Case, from and after the Death of the said Tho. Suction, it shall be lawful for Us our Beirs and Succello2s by Letters Patent under the Great Seal of England of Privy Seal, to nominate and appoint meet Person and Persons to all and every such Diffice, Rooms, Place and Places as thall remain void for the Time aforesaid

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by the Wefault of the faid Governozs and their Successfors as is aforesaid: And we do further, of our especial Brace, certain knowledge, and meer Potion, for Us, our Beirs and Successozs, give and grant, That the faib Waster, Pzeacher, School-master, Ather, poor Pen, Children, Scholars, Wembers, and Officers of the said Pospital, and every of them, thall be allowed, ordered, vireded, vilited, placed og vifplaced by the fate Thomas Surron during his Life, and after his Death by the faid Bobernozs foz the Time being, and their Successozs 02 the more Part of them, according to such Allowances, Kules, Statutes, and Devinances, as shall be appoint ed, fet foath, made, devised, og established by the faid Thomas Sutton during his Life, in Wirting under his Pand and Seal, and after his Death by the Governozs for the Lime being and their Successors or the more Part of them under the faid common Seal: And further The have given and granted, and by these Persents do give and grant to the said Thomas Sutton during his Life, by Writing under his Pand and Seal, and to the faid Gevernors and their Successors for the Time being, oz the moze Part of them after his Decease under the faid common Seal, to make, fet down, and appoint such Kules, Statutes, and Davinances for the Kule, Governs ment, and well ordering the faid Pospital, and of the said Paster, Preacher, School-master, Ather, poor peo ple, Childzen, Scholars, Dembers, and Officers for the Time being, and for their and every of their Mages, Stipends, and Allowances, for and towards their or any of their Paintenance and Relief as to the faid Thomas Sutton during his Life, and after his Decease to the said Governozs and their Successors for the Time being of the moze Part of them thall feem meet and convenient: And that the same Divers, Rules, Seatutes, and Di dinances to by him, them, or any of them to be made, fet down, and prescribed as aforesaid, shall be and stand in full Force and Strength in Law, to all Constructions, Intents, and Purposes, the same not being repugnant to our Pzerogative Royal, noz contrary to the Laws and Statutes of this our Realm of England, Poz to any Eccleliastical Canons of Constitutions of the Church of England, which then thall be in Force: And that for the better Government of the faid Holpi tal, the faid Thomas Sutton during his Life, and after

his Decease the faid Governozs for the Time being of the most Part of them, or fuch and fo many of them as the fair Thomas Sutton thall by his Wariting under his Mand and Seal thereunto affign, appoint, and nominate. thall and may after the Decease of the faid Thomas Sutton, have full Power and lawful Authority to villt, or per, and punith, place og bifplace the Patter, Wzeacher, School-matter, Ather, poor Pedple, Scholars, Pembers and Officers of the faid Pospital and every of them, And to ozber, reform, and redress all and every the Dif orders, Wisdemeanors, Offences, and Abutes in the Derfons afozefaid and every of them, oz in the faid Doc pital oz Free-school, oz in oz touching the Government Diver, and disposing of the same, And to censure, suf-Depaibe, and Difplace the faid Pafter, Preacher, bers, and Dicers, and all, every, oz any of them, as to him the faid Thomas Sutton during his Life, and after his Death, to the said Governozs for the Time being and their Successors, or the more Part of them, or to such and so many of them as the said Thomas Sucton by any his Wiriting under his Hand and Seal thall theres unto assign, hominate, and appoint, thall to him or them respectively feem fit, just, and convenient. So always that no Ailitation, Ad og Thing in og touching the same. be had, made, or done by any Person or Persons during the Life of the said Thomas Sutton, other than by the said Thomas Sutton and after his Death by the faid Bobers nors for the Time being and their Successors or the more Part of them, 02 by fuch 02 fo many of them as the fain T. Sutton by his Wariting under his Band and Seal thalt nominate and appoint thereunto: And Wile of our further special Grace, certain knowledge, and meer Dotion, and by our supream Power and Authority for Wis our heirs and Successors, do will, ordain, and grant, that the said Pospital, and the Patter, Preacher, Schoolmatter, Ather, Hembers, Officers, and all other the Ders fons to be placed in the faid Volpital, thall be for ever hereafter exempted and freed of and from all Wilitation, Punishment, and Correction to be had, used, or exercised in 02 upon them 02 any of them by the Dedinary of the Diocele for the Time being, or by any other Person or Persons whatsoever, other than by the said T. Sutton during

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his Life, and after his Death by the faid Governors for the Time being, and their Successors: And further know ye, that we for the Considerations asoresaid, of our especial Grace, certain knowledge, and meer Postion, have given and granted, and by these Presents sor the our Heirs and Successors do give and grant to the fain Governozs of the Lands, Polleshons, Revenues, and Gove of the Polpital of King James, founded in the Charges house within the County of Middlesex, at the Sotton Elquire, and to their Successors for ever, our es ecial Licence, and free and lawful Liberty, Power, and pozity to get, purchase, receive and take to them and ches descelloss for ever, for the Paintenance, Sustenta-tion, and Relief of all and every the Person and Persons tion, and Relief of all and every the Person and Persons on he placed in the faid Dospital, of and from the faid Thomas Sucton, his Beirs and Assigns, the said great and large Pantion-house, commonly called the Charter-house belies Smithfield, together with the Poules, Buildings, Courts, Pards, Bardens, Dachards, Closes, and other Dereditaments, lately purchased by the said Thomas Sutron of the faid Thomas Carl of Suffolk, And all those his Garous and Lozoships of Southminster, Norton, Little Helliegbury, alias Hallingbury Bouchers, and Much Stanbridge in the County of Essex, with all their and every of their Rights, Pembers, and Appurtenances inhactoever, and also all those his Panozs and Lozoships of Bustingthorpe clies Bullingthorpe and Dunnesby in the County of Lincoln, with their and every of their Rights, Dem bers and Appurtenances whatfoever, And also all those is Manoes of Salthorp alias Saltrop alias Halthrop, Chilton, and Blackgrove in the County of Wilts, with their and every of their Kights, Dembers and Appurtenances, and also all those his Lands and Pasture-grounds called Blackgrove, containing by Estimation two hundled Acres of Pasture with the Appurtenances in Black-grove and Wroughton in the said County of Wilts, and also all that his Paroz of Missenden otherwise called the Panoes of Missunden in the Parishes of Wroughton Lydyerd and Tregole in the faid County of Wilts, with all his Rights, Pembers, and Appurtenances, And all that his Panoz of Elcombe and Park called Elcombe Park with the Appurtenances in the faid County of Wilts, And also all that his Panoz of Watlescote alias Wiglescete alias Wigelscete with the Appurtenances in the faid County of Wilts, And al so all that his Panoz of Wescote alias Wescete with

the Appurtenances in the faid County of Wilts, And also all those his Lands and Paffures containing by Estima-tion one hundred Acres of Land, and threescore Acres of Pasture, with the Appurtenances in Wiglescore and Wroughton in the said County of Wilts, And all that his Panoz of Uffcote with the Appurtenances in the fair County of Wilts, And also all those his two Peduages and one thousand Acres of Land, tive thousand Acres of Walture, three hundred Acres of Deadow, and three hundred Acres of Mood with the Appurtenances in Bro hinton in the faid County of Wilts, And also all those the Panozs and Lozoships of Campes alias Campes Cafile otherwise called Caftle Campes with the Appurtenances scituate, lying, being, and extending in the Counties of Cambridge and Effex, or in either of them, or elfe where within the Realm of England, and also all that his Manoz of Balsham in the County of Cambridge, with all and lingular the Rights, Pembers, and Appurtenances, thereof inhatsoever, and also all those his Pessuages and Lands scituate, lying and being in the Parishes of Hackney and Tomenham in the County of Middlesex, 92 in either of them, with their and every of their Rights. Dembers, and Appurtenances whatfoever, which faid Destuage was lately purchased of Sir William Bowyer anight, and the said Lands in Tomenham now are 02 lately were in the Tenure of Decupation of William Benning Proman, And also all and fingular the Bano2s. Lowthips, Welluages, Lands, Tenements, Reberli ons, Services, Beadows, Paltures, Woods, Abboin-lons, Batronages of Churches and Pereditaments of the faid Thomas Sutton whatfoever, scituate, lying, oz being within the faid Counties of Effex, Lincoln, Wilts, Cambridge and Middlesex, or in any of them, with all and every their Kights, Hembers, and Appurtenances whatfoeber of any fuch, and fo many and fuch Part of the laid Panoes, Advoirsons, Lands, Tenements, and Hereditaments, og of any Part thereof, as the laid Thomas Sutton thall think meet; And also all Letters Pas tents, Indentures, Deeds, Evidences, Bonds, and Writings concerning the Premisses or of any of them, which shall be so given and granted by the said Thomas Surron to the faid Governozs and their Successozs, and all luch Conditions, Warranties, Mouchers, Actions, Suits, Entries, Benefits, and Demands as thall be oz may be had by any Person or Persons upon or by Reason of them many of them (except all his Panozs oz Lozoships of Lit-

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tlebury and Haddestocke with the Appurtenances in the faid County of Effex afozefaid) of in either of them, tho the Premises or any of them be holden of Us imme diately in Chief, or by Unights Service, or otherwise howsoever, And without any Licence or Pardon for Actionation of them or any of them; the Statute of Portinain, or any other Ad, Statute, Ordinance, or Provision to the contrary in any wife notwithstanding: And also We do give and grant like Licence, Power, and Authority to the said Thomas Sutton, his Peirs and Alsigns, to give, grant, and assure unto the said Governors and their Successors for the Uses, Intents, and Durpoles afozesaid, all and every the said great and large Pansion house commonly called the Charter-house belides Smithfield, together with the Poules, Buildings, Courts, Pards, Barbens, Dechards, Clofes, and other Dereditaments lately purchased by the said Thomas Sutton of the said Thomas Carl of Suffolk, And all those his Manage and Lozoships of Southminster, Norton, Little Hallingbury alias Hallingbury Bouchers, and Much Stanbridge in the faid County of Effex, with all their and every of their Rights, Dembers, and Appurtenances inhatsoever, And also all those his Panoes and Loedships of Bustingthorpe alias Bustingthorpe and Dunnesby in the County of Lincoln, with their and every of their Rights, Members, and Appurtenances whatfoever, And also all those his Manors of Salthorpe alias Saltrope alias Haltherope alias Halstrop, Chilton and Blackgrove in the County of Wilts, with their and every of their Rights, Wembers, and Appurtenances, And also all those his Lands and Pasture Brounds called Blackgrove, contains ing by Estimation two hundred Acres of Walture with their Appurtenances in Blackgrove and Wroughton in the faid County of Wilts, And also all that his Manoz of Mifenden, otherwise called the Panoz of Missunden in the Barifies of Wroughton Lydeyard and Tregose in the said County of Wiles, with all his Kights, Pembers, and Appurtenances, And all that his Panoz of Elcomb and the Park called Elcomb Park with the Appurtenances in the faid County of Wiles, And also all that his Panoz of Watlescote alias Wiglescete alias Wigelscete with the Appurtes nances in the faid County of Wilts, And also all that his Manoz of Wescote alias Wescete with the Appurtenances in the faid County of Wilts, and also all those his Lands

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and Paftures, containing by Estimation one hundzed Acres of Land, and threescore Acres of Pasture, with the Appurtenances in Wiglescote and Wroughton in the faid County of Wilts, And all that his Panoz of Uffcote with the Appurtenances in the faid County of Wilts, And also all those his two Pelluages and one thousand Acres of Land, two thousand Acres of Pasture, three hundred Acres of Deadow, and three hundred Acres of wagood with the Appurtenances in Brodehinton in the said County of Wilts, And all those his Panozs and Lozoships of Campes alias Campes Castle otherwise called Castle Campes with the Appurtenances scituate, lying, and being, and extending in the Counties of Cambridge and Essex, or in either of them, or elsewhere within the Realm of England, And also all that his Panor of Balsham in the County of Cambridge, with all and singular the Rights, Pembers, and Appurtenances thereof whatfoever, And all those his Pelluages and Lands scituate. lying, and being in the Parishes of Hackney and Tot-tenham in the County of Middlesex, or in either of them, with their and either of their Kights, Pembers, and Appurtenances whatfoever, which faid Peffuage was lately purchased of Sir William Bowyer Unight, and the said Lands in Tottenham now are oz late were in the Tenure of Decupation of William Benning Deoman; And also all and lingular the Panoes, Loedships, Pelluages, Lands, Wenements, Reverlions, Bervices, Beadows, Pastures, Woods, Advowsons, Patronages of Churches, and Dereditaments of the faid Thomas Sutton whatfoever, scituate, lying, or being within the said Counties of Effex, Lincoln, Wilts, Cambridge, and Middlefex, 02 any of them, with all and every of their Rights, Dems bers, and Appurtenances whattoever, or any such, and so many and such Part of the said Panoes, Advoirsons, Lands, Tenements, and Hereditaments, 02 of any Part thereof, as the faid Thomas Sutton thall think meet; And also all Letters Patents, Indentures, Deeds, Evidens ces, Bonds, and Wiritings concerning the Premiffes 02 any of them, which thall be fo given and granted by the faid Thomas Sutton to the faid Governozs and their Sutcessors, and all such Conditions, Warranties, Houchers, Actions, Suits, Entries, Benefits, and Demands, as hall be or may be had by any Person or Persons upon

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or by Reason of them or any of them (except all his asa mozs oz Lozoships of Littlebury and Haddestocke with the urtenances in the faid County of Effex afozefaid) 02 in either of them, though the Paemilles or any of them be bottom of Us immediately in chief, or by Linights Herbice, or otherwise howsbeber, and without any Licence of Pardon for Alienation of them or any of them, the Ptatute of Portmain, or any other An, Statute, Dr dinance, or Problem whatfoever to the contrary in any vinance, or Provision whatsoever to the contrary in any wife notwithkanding: And our further Will and Please fare is, and we do by thefe Pacients for Us our Heirs and Successes, ordain and Availly charge and command, that whensever and as often as any of the Churches, arfonages, Micarages, Chapels, 02 other Spiritual Livings, the Advoisions, Patronages, of Donations whereof are hereby meant, of mentioned to be licenced to be given by the faid Thomas Sutton to the faid Gover. nozs and their Successors for and towards the Bainter nance of the faid godly and charitable Ales, thail happen to be boid or become Presentative or presentable, or to be given or collated unto, by Meason of the Death, Religi nation, or Deprivation of any Incumbent or Incum-bents of them or any of them, or by any other Deans howfoever, that then and so often the said Governors for the Time being, and their Successors, or the greater Part of them for the Time being, shall present, pres fet, and collate thereunto fuch meet and fufficient Bers fons as they thall think fit, Pevertheless our fall Deaning and Direction in this Behalf is, and so we do by thefe Pzefents for Us our Deirs and Successors, ordain and veclare, that such and so many of the Scholars which shall from Time to Time be brought up and taught in the faid Hospital and every of them, as shall after be fully qualified and become meet to take upon them or any of them the Charge of the faid Churches, Recozies; Parlo nages, Aicarages, Chapels, ve other spiritual Livings as forefait, thall as near as may be from Time to Time, be by the fato Bobernozs and their Successozs, prefented, pres ferred, and collated thereunto before any other Perfon of Persons whatsoever, abotting as much as may be the Giving of moze Benefices than one to any one In cumbent : And to the End that all Suspicion of indirect Dealing, which might hereafter be used og put in prats tile by the afozefaid Bovernors or their Successors, or as my of them, contrary to the true Intent and Heaning of thele

thefe Paelents, may be prevented and taken away, poir Mill and Pleasure is, and The do by these Presents sor Us our Peirs and Successors, sedain and streightly charge and command, That the Panors, Lands, Te nements, and Pereditaments, and other Things which at any Dime hereafter thall be given, granted, og conbeyed for the Paintenance of the said godly and charitable Mes before in these Presents mentioned, or any Bart of Parcel of them or of any of them, shall at any Dime hereafter be by the laid Bovernozs oz their Successes, oz any of them leafed, demised, granted, or conveyed to them the said Governozs, or their Successors, or to any of them, or to any other Person or Persons whatsoever, sor or the Ale, Benefit, or Behoof of the sand Governors, or of their Successors, or of any of them, Althor express Bention of the clear yearly Halue and Certainty of the Premisses, or any of them, or of any other Gifts or Grants by Us or any of our Progenitors or Predecels loss to the forefait Thomas Surton heretofore made, is not made, 02 any Statute, Ac, Dedinance, Perovision, Pedinantion, 02 Restraint to the contrary hereof hav, made, ozbained, og provided, og any other Thing, Canfe, 03 Batter whatsoever in any wife notwithkanding : In Mitnels whereof whe have caused these our Letters to be made Patents, Witness our felf at Westminster the two and twentieth Day of June, in the ninth Bear of our Reign of England, France and Ireland, and of Scotland the rith, prout per easdem literas patentes plenius liquet & apparet.

Et ulterius Jur. prædict. dicunt super sacramentum suum prædictum, quod prædictus Tho. Sutton de omnibus & singulis præmissis prædictis cum pertinentiis in sorma prædicta seiste existen, idem Thomas Sutton postes, & ante prædictum tempus quo, &c. scilicet tricesimo die Octobris anno regni domini Jacobi nunc Regis Angliæ nono supradicto, secit quoddam scriptum suum sigillo suo sigillat, geren. dat. eisdem die & anno; ac Jur. prædictis in evidenc. ostens. cuidam Johanni Hutton Clerico, tenor cujus quidem scripti se-

quitur in hæc verba.

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TD all to whom these Presents shall come, Tho. Sinton of Balsham in the County of Cambridge Esq; sendeth greeting: Whereas it hath pleased the King's most excellent Pajesty that now is, by his Highnes's Letters Patents bearing Date at Westminster the two and twentieth

Day of June, in this present ninth Pear of his Highnes's Reign over England, upon the humble Suit of the faib Thomas Sutton, to give Licence, Power and Authority to him the fato Thomas Sutton, to place, found, and erect an Polpital and Free School in the Pouse called the late disolved Charter-house besides Smithfield in the County of Middlesex, And like Licence, Power and Authority for him the fair Thomas Sutton, at any Time during his Life to opain, appoint, and place a Paster of the said Pospital, and that the said Pospital should be called by the Pame of the Pospital of Ling James, founded in the Charter-house within the County of Middlesex. at the humble Petition and only Colts and Charges of Thomas Sutton Equire: And where furthermoze by the faid Letters Patents the Patter of the faid Polpital for the Time being is ozdained and appointed to be one of the fixteen Governozs of the Lands, Lossessions, Rebes nues, and Goods of the said Pospital, And that the same firteen Governozs are by the faid Letters Patents incorpozate to purchase, and take Lands to them and their Successors soz ever, soz the Paintenance of the said Hole pital, by the Pame of the Governozs of the Lands, Poli fessions, Revenues, and Goods of the Pospital of king James, founded in the Charter-house within the County of Middlesex, at the humble Petition and only Costs and Tharges of Thomas Sutton Esquire, as by the said Let ters Patents (among other Things) moze at large may appear: 159 Reason whereof, there mult be a Paller made befoze fuch Time as the faid Tho. Sutton can conbey the Lands intended by the said Thomas Sucton to be conbeyed for the Paintenance of the said Vospital unto the faid Governozs, according to the faid Letters Pa tents: Pow the said Thomas Sutton, minding the performance of the said charitable Ac, hath according to the Power given him by the faid Letters Patents, and by these Presents doth place, ordain, nominate, constitute and appoint his right trusty and well beloved John Hutton Clerk, the first and prefent Paster of the Holpi tal of King James, founded in the Charter-house within the County of Middlesex, at the humble Petition and only Colls and Charges of Thomas Sutton Esquire, To have and to hold the faid Diffice, Room, and Place of Paller of the faid Despital unto him the faid John Hutton, from henceforth for and during the good Will and Pleasure of the faid Tho. Sutton: In Witness whereof the said Tho-

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mas Sutton hath hereunto put his Hand and Seal, dated the thirtieth Day of October in the minth Pear of the Reign of our said Sovereign Lozd James by the Brace of God, king of England, France and Ireland, Defender of the

faith, &c. and of Scotland the five and foztieth.

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Et ulterius Jur' præd. dicunt super sacramentum suum prædictum, quod prædictus Thomas Sutton, de omnibus & fingulis præmissis præd. cum pertinentiis in forma præd. seifit' existen. postca & ante prædictum tempus quo; &c. scilicet primo die Novembris anno regni dicti domini regis nunc Angliæ, &c. nono supradict. fecir quandam Indenturam fuam, inter ipsum Thomam Sutton per nomen Tho. Sutton de Balsham in comitat. Cantabr: armiger. ex una parte, & reverendiffimum in Deo patrem Georgium dom. Archiepiscopum Cantuar. primat. & metropolitan. totius Angliæ, & prenobilem Thomam dom. Ellesmere dominum Cancellar. Angliz, prznobilem Rob comit. Salisbury dominum magnum Thefaur. Angliæ, reverend. patrem in Deo Lancelot. dominum Episcopum Elien', Edward. Coke milit. dominum capital. Justic, de Com. Banco, Tho. Foster milit. unirm Justic. de Communi Banco, Henricum Hobart milit. & baronet. attorn. general. dicti domini regis nunc, Johannem Overal Decanum cathedral. Ecclesiæ sancti Pauli in London, Georgium Mountaine Decanum Collegiat. Ecclefiæ Westm. Henr. Thursby armig. unum magr. cur. Cancellar', Galfrid. Nightingale armig', Ricard. Sutton armig', Johannem Law gen', Thomam Browne gen', & Johannem Hutton Clericum, per nomina reverendissimi in Deo patris Georgii Domini Archiepisc. Cantuar. primat. & metropolit. totius Angliz, prznobilis Thomz domini Ellesmere domin. Cancell. Angliæ, prænobilis Roberti comitis Salisbury domini magni Thesaur. Anglia, reverend. in Deo patris Johannis domini Episcopi Lond. reverend. patris in Deo Lanceloti domini Episcopi Elien', Edwardi Coke militis domini capitalis Just. de communib. placitis, Thomæ Foster mil. unius Justic. cur. de communib. placitis, H. Hobart mil. & baron. attorn. general dom nostri regis, Johannis Overal decani cathedrali Ecclesia sancti Pauli in London. Georgii Mountaine Decani collegiat. Ecclefiæ Westm. Hen. Thursby ar. unius magr. cur. Cancellar', Galfrid. Nightingale ar', Ricardi Sutton armig', Johannis Lawe gen', Tho. Browne gen', & Johannis Hutton clerici Magistri Hospitalis regis Jacobi fundat, in Charterhouse infra comitatum Midd, ad humilem petitionem & sola cultag. & onera Thom. Sutton ar. primorum & præfentorum Guberna-

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Gubernatorum terrarum, possessionum, reversionum, & bonorum Hospitalis regis Jacobi fundat. in Charterhouse infra
comitatum Midd. ad humilem peritionem & sola custagia
& onera Tho. Sutton ar', ex altera parte fact. ac infra sex
menses tunc prox. sequen', scilicet quarto die Novemb. an.
reg. dom. Jacobi nunc reg. Angliæ nono suprad', in cur. Cancell. dicti dom. regis nunc, apud Westm. præd. tunc exist',
debito modo de recordo irrotulat. secundum formam statuti
in hujusmodi casu edit. & provis. Ac cujus una pars inde sigillo præd. Tho. Sutton sigillat. & Jur. præd. in evidenc, ostens. fuit, geren. dat. eisdem die & anno, cujus quidem In-

dentur. tenor fequitur in hac verba.

This Indenture made the first Day of November, in the Pear of our Lozd God Due thousand fix hundzed and eleven, and in the Pears of the Keign of our Sovereign Lozo James, by the Brace of Boo, King of England, Scotland, France and Ireland, Defender of the Faith, &c. That is to fay, of England, France and Ireland the Rinth, and of Scotland the five and fortieth, Between Thomas Suction, of Balsham in the County of Cambridge Esquire of the one Party, And the Polt Reverend Father in God, George, Lozd Archbishop of Canterbury, Primate and Petropelitan of all England, And the Right Homourable Thomas Lozd Ellesmere Lozd Chancelloz of England, The Right Bonourable Robert Carl of Salifbury Lozd High Areasurer of England, The Right Reverend Father in God, John Lozd Bithop of London, The Right Reverend Father in God Lancelot, Lozd Bishop of Ely, Sir Edward Coke Unight, Lozd Chief Instice of the Common Pleas, Sir Thomas Foster Unight, one of the Instices of the Court of Common Pleas, Sir Henry Hobart Anight and Baronet, Atto: ney General of our Sovereign Lozd the King, John Overall Dean of the Cathedral Church of Saint Paul in London, George Mountain Dean of the Col legiate Church of Westminster, Henry Thursdy Esquire, one of the Wasters of the Court of Chancery, Jeffrey Nightingale Efquire, Richard Sutton Efquire, John Law Bentleman, Thomas Browne Bentleman, and John Huted in Charter-house within the County of Middlesex, at the humble Petition and only Costs and Charges of Thomas Sutton Esquire, the first and prefent Governor of the Lands, Policinous, Revenues and Goods of the pospital of king James founded in Charter-house with

in the County of Middlesex, at the humble Petition and only Costs and Charges of Thomas Sutton Esquire, of the other Part, witnesseth, That whereas it hath pleased the Ling's most excellent Pajesty that now is, by his Dighnels's Letters Patents bearing Date at Westminfler, the two and twentieth Day of June, in this present ninth Pear of his Bighnels's Reign over England, upon the humble Suit of the faid Thomas Sutton, to give Licence, Power, and Authority to him the faid Thomas Sutton, to place, ered, found, and establish, at og in the faid Poule called the late diffolbed Charter-house belides Smithfield within the County of Middlesex, one Pospistal, Pouse of Place of Abiding for the Finding, Sufrentation, and Relief of pooz, aged, maimed, needy or impotent People, as also to place, found, and establish at oz in the said House one free School foz the Inkruding, Paintenance and Education of poor Children or Scholars, and that the faid Pospital thouse for ever afterivaros be incorporated, named, and called the Hos spital of Bing James founded in Charter-house within the County of Middlesex, at the humble Petition and only Costs and Charges of Thomas Sutton Esquire, And that he the faid Thomas Sutton during his Life, and after his Death the faid Governozs and their Successozs for ever, thould have Power, Licence, and Authority to arbain, appoint, and Place therein a Paster, a Preacher, a school-matter and Ather, and fuch Pumbers of poor People, Scholars, and Officers as they thould think meet, and in Default thereof his Pajelly his Peirs and Successors; and where likewise our said Sovereign Lozo the King's Pajetry, by the fair Letters Patents, both incorporated the fair Lozd Archbishop, Lozd Chancelloz, Lozd Areafurer, John Bishop of London, Bishop of Ely, Sir Edward Coke Knight, Sir Thomas Foster Knight ster knight, Sir Henry Hobart knight and Baronet, John Overal, George Mountain, Henry Thursby, Jeffery Nightingale, Richard Sutton, John Lawe, Thomas Browne, and the Patter of the faid Pospital for the Time being by the Pame of the Governozs of the Lands, Possel fing, Revenues, and Goods of the Hospital of King James, bunded in Charter-house within the County of Middlesex. at the humble Petition and only Coffs and Charges of Thomas Sutton Esquire, And mozeover hath thereby pranted Licence, as well to the said Governozs and their duccessors, to have, take and purchase, as also Licence

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The Case of Sutton's Hospital. PART X. and Authority to the faid Thomas Sutton his Beirs and Affigns, to give, grant, and assure unto the said Gover: nozs and their Successozs, for the better Continuance of the faid Hospital and Free School for ever, and for the watter Maintenance of the Malter, Preacher, School-matter, Alber, and such Pumber of poor People, School lars, and Officers of and in the faid Hospital for ever as thall be therein placed as is afozefaid, All and every the Panoes, Lands, Tenements, Kents, Keversions, Adbowsons and Pereditaments hereafter herein mentions ed to be granted or conveyed, as in and by the faid Lets ters Patents among other Things moze at large may appear, Sithence which said Letters Patents the said Thomas Sutton hath by his Deed of Whiting under his Hand and Seal, bearing Date the thirtieth Day of October last, ordained and appointed the said John Hutton to be the first and present Paster of the said Pospital, according to the Eurport, Tenor, and true Peaning of the said Letters Patents, And the said Thomas Sutton being minded in his Life-time to perfect the faid godly and charitable Ac himself, and not to leave it to be personned after his Death by others. This Indenture therefore witnesseth, That the said Thomas Sutton, foz and in Consideration of the Continuance of the faid Vospital and Free School for ever, and for the hetter Paintenance of the said Patter, Pzeacher, School-matter, Ather, poor People, Scholars, and Officers sor ever hereaster, with the Kents, Kevenues, Mues, Comprodities and Profits of the Panors, Lands, Tenements, Kents, Keverlions, Advowlons, and Vereditaments hereafter in these presents mentioned to be conveyed, and for and in Consideration of the Sum of five Pounds of tawful Poney of England, the Control of Careful Care by the said Lozd Archbishop and other the Governozs aforesaid paid, which said Sum of five Pounds the said Thomas Sutton confesseth and acknowledgeth hims self to have received of the said Governozs, and theres of both acquit and discharge the said Governozs soz es ver by these Presents, And in Consideration of the yearly Rent of twelve Pence of lawful Poncy of England hereafter in and by these Presents reserved to the said Thomas Sutton and his Peirs, And for divers other good and reasonable Considerations him especially moving, hath (according to the said Licence of the Ling's Pajes

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given, bargained, fold, granted, confirmed, and conveysed, and by these Presents both for him and his Heirs, bargain, fell, give, grant, confirm, and convey unto the fair Governors of the Lands, Pollessions, Revenues, and Goods of the Polpital of King James founded in Charter-house within the County of Middlesex, at the humble Petition and only Cofts and Charges of Thomas Sutten Clquite, and to their Successors for ever, All that the Mantion-house commonly called Charter-house besides Smithfield in the said County of Middlesex, And all and lingular Pelluages, Houses, Courts, Pards, Gardens, Dichards, Closes, and other Hereditaments within the County of Middlesex, lately purchased by the said Thomas Sutton of the Right Ponourable Thomas Carl of Suffolk, And all those his Panozs and Lozothips of Southminster, Norton, Little Hallingbury, alias Hallingbury Bouchers, and Much Stanbridge in the County of Effex, with all their and every of their Rights, Dems bers, and Appurtenances whatfoever, and also all those his Panozs and Lozothips of Buffingthorpe alias Buffingthorpe and Dunnesby in the County of Lincoln, with their and every of their Rights, Dembers and Appurtes nances whatsoever, And also all those his Panoes of Salthorpe alias Salthrope alias Haltherope, alias Halstroppe, Chilton, Blackgrove, Uffcot, Misenden alias Mifunden, Watlescot alias Wiglescote alias Wigelscete, Wescote alias Wescete, and Elscomb in the County of Wilts, with their and every of their Kights, Pembers and Appurtenances, and also all that his Park called Elcombe Park in Elcombe in the said County of Wilts, with its kights, Pembers, and Appurtenances, And all those his Lands and Patture Grounds called Blackgrove, containing by Estimation two hundred Acres of Pasture with their Appurtenances in Blackgrove and Wroughton. in the said County of Wilts, and also all those Lands and Pastures containing by Estamation one hundred Acres of Land, and lifty Acres of Pasture, with the Appurtenances in Wigglescote and Wroughton in the said County of Wiles, And also all those his two Pelluages and me thousand Acres of Land, two thousand Acres of Pas ture, three hundred Acres of Weadow, and three hundred Acres of Whood with the Appurtenances in Brodehinton the faid County of Wilts, And all those his Panozs and Lozoships of Campes alias Campes Castle otherwise alled Castle Campes with the Appurtenances, situate' D 3 lying

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lying, and extending into the Counties of Cambridge and Effex, 02 in either of them, 02 elsewhere within the Realm of England, And also all that his Pano2 of Balham in the County of Cambridge with all and lingular the Rights, Members and Appurtenances thereof what foever, And all those his Pelluages and Lands scituate, lying and being in the Parishes of Hackney and Totten-ham in the County of Middlesex, or in either of them, with their and either of their Rights, Pembers, and Appurtenances thereof whatfoever, which faid last mentioned Pelluage was lately purchased of Sir William Bowyer knight, and the said Lands in Tottenham now are 02 late were in the Tenure 02 Decupation of William Benning Peoman, And also all and fingular the Panois. Lordships, Pelluages, Lands, Tenements, Kents, Kes persions, Hervices, Peadows, Pastures, Moods, Ad-powlons, Patronages of Churches, Liberties, Principal leges, Franchises, and other Pereditaments whatsoever of the faid Thomas Sutton, scituate, lying, 02 being, 02 to be hav, taken, or enjoyed within the faid Counties of Effex, Lincoln, Wilts, Cambridge and Middlesex, or in any of them, with all and every their Rights, Pembers, and Appurtenances whatfoever, and alfo all Letters Da tents, Indentures, Deeds, Charters, Extents, Court Rolls, and other duritings, Piniments, and Evidentes whatfoever, concerning the Premises or any of them or any Part or Parcel of them or any of them, Er cept and always foreprised out of these Presents the Ma 11028 02 Lo20ships of Littlebury and Haddestocke with the Appurtenances in the said County of Essex, and all and singular Destuages, Lands, Tenements, Liberties, Participality of Essex, and Appropriate of Essex, and all and singular of Essex, and a Barcel, 02 Dember, 02 accepted, reputed, 02 taken as Part, Parcel of Pember of the faid Panois of Little-bury and Haddestocke, or of either of them, or to the faid Manoz of Littlebury and Haddeflocke oz either of them belonging or appertaining, To have and to hold the said Mansson-house, called the Charter-house besides Smithfield and all and every the said Manaes, Belluages, Parks, Lands, Tenements, Lozothips, Kents, Reversions, Services, Abbowions, Liberties, Franchises, Privileges and Perevitaments, and all other the Premiss, with their and every of their Rights, Dembers and Appurtenances (except befoze excepted) unto the faid Governozs of the Lands, Polletions, Revenues,

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and Goods of the Hospital of King James founded in Charter-house within the County of Middlesex at the humble Betition and only Cofts and Charges of Thomas Sutton Elguire, and their Successors for ever, upon spes tial Crust and Confidence that all and lingular the Kents, Illnes, Revenues, Commodifies, and Profits of all and lingular the faid Panozs, Poufes, Lands. Tenements, Peredicaments, and other the Pizemisses. with their Appurtenances, thall be for ever hereafter from Dime to Dime truly, faithfully, and wholly diffributed, converted, and imployed by the faid Governors and their Successors to and for the Paintenance and Continuance of the faid Hospital and Free-School, and of the faid Patter, Preacher, School-matter, Ather, poor People, Scholars and Officers of and in the faid hospital and Free School for the Time being, at all Times hereafter, and from Time to Time for ever. according to the true Intent, Purport, and Peaning of the faid Thomas Sutton, and according to the Tenoz and Durport of the fair Letters Patents and of these Prefents, and to none other Trust, Tife, Confidence, Intent, Purpose, or Imployment whatsoever, yielding and paying therefore yearly unto the faid Thomas Surton and his Weirs the yearly Kent of twelve Pence at the fealt of the Pativity of Saint John Baptist yearly to be paped, And when and as often as the faid yearly Rent of twelve Pence thall be behind and unpayed at any feat whereon the same ought to be payed, That then and so often it that be lawful for the said Thomas Surton and his Heirs into the Premisses and into every 02 any Wart oz Parcel thereof to enter and distrain, and the Distress and Distresses there taken to take, lead, and carry away, and with him and them to betain, unstil he and they be satisfied of the said Rent and the Ars regraces thereof if any be: In witness whereof the Parties first above-named to these present Indentures interchangeably have set their Hands and Seals, given the Day and Bear first above written.

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nes, and Et ulterius Juratores præd. dicunt super sacramentum sum præd. quod præd. Thomas Sutton de præd. p'missis cum perinentiis in com. Midd. ut præsertur fist. existen. idem Tho. Sutton post præd. Indentur, bargantum & venditionem D 4

de præmissis prædictis cum pertinentiis unde, &c. per prædictum Thomam comitem Suffolk. præfat. Thomæ Sutton fact, Ac post præd. irrotulament. ejusdem Indenturæ; & ante literas patentes prædictas per præfatum dominum regem nunc ut præfert, fact. & ante præd. Indentur, fact. inter præd. Thomam Sutton ex una parte, & præd. Georgium Archiepiscopum Cantuar. primat. & metropolitan. totius Anglia, & al. de altera parte, geren. dat. primo die Novemb. anno regni dicti dom. regis nunc nono suprad, appunct. quendam Ric'm Birde fore Janitor', Anglice, to be souter, præd. messuagii voc. the late dissolved Charterhouse beitdes Smithfield, præd. Tho, Sutton, qui quidem Ric'us Birde continuavit Janitor ejusdem messuag. post in-dent. illa. fact. inter præd. Tho. Sutton ex una parte & præd. Georg. Archiepisc. Cantuar, & al. ex alter. parte geren. præd. primo die Novemb. ann. reg. dom. regis nunc nono suprad. usq; mortem præd. Thomæ Sutton: Et ulterius Jur. præd. dicunt fuper facram, fuum præd. quod præd. Thomas Sutton postea & ante præd. tempus quo, &c. scilicet, secundo die Novemb, anno domini millesimo sexcentesimo undecimo, condidit testament. & ultimam voluntat. sua in script, inter alia prout sequitur in hac verba. And my duell and Meaning is, What unless the said Sir Francis Popham and the faid Lady Anne his Wife Do of thall gibe to mine Executor or Executors a general Acquittance or Release to the Effect above-mentioned, That then as well the faid Legacy of two thousand Warks so willed to be given to the said Sir Francis Popham and the Lady Anne his Wife, As also the other several Legacies given and bequeathed unto every of the said Children of the faid Sir Francis Popham and the Lady his Wife, shall remain and be to the Ale of mine Executor 02 Executors, to be wholly disposed and given by them, within one whole Pear after my Decease, partly to the Pending of the Highways, and partly to poor Paids Parriages, and partly to the Releating of poor Den that lie in Di fon for Debt, and partly to the poor People of my in tended Hospital, when it shall please God it shall be established and erected: Also I give for and towards the Building of mine intended Hospital, Chapel, and School-house the Sum of five thousand Pounds: Item, I give into the Arcasury or Store house of my intended Pospital, to begin their Stock with and to defend the Rights of the Pouse one thousand Pounds of lawful English Poney: And I give to every one of my Feoffces whom I have put in Trust about my in

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tended Pospital to whom I have not given any Thing in this my Last Will, the Sum of twenty-sir Pounds thir-teen Shillings and four Pence of lawful Poney of England, prout per eadem testamentum & ultimam voluntatem plenius apparet: Et ulterius Jur. prædicti dicunt super facramentum Juum prædictum, quod prædictus Thomas Sutton postea & ante prædictum tempus quo, &c. scilicet duodecimo die Decembris anno regni dicti domini Regis nunc nono apud Hackney in comitatu Middlesex obiit fine exitu de corpore suo legitime procreato; & quod prædictus Simon Baxter modo querens est & tempore mortis prædicti Tho. Sutton fuit confanguineus & proximus hæres prædicti Tho. Sutton, videlicet, filius & hæres Dorotheæ solius sororis prædicti Thomæ Sutton: Et ulterius Juratores præd. dicunt super sacramentum suum prædictum, quod prædicti Richardus Sutton & Johannes Lawe postea & ante præd. tempus quo, &c. Claman. ut duo Gubernatores Terrarum, Pof-fessionum, Reventionum, & Bonorum Hospitalis Regis Jacobi fundat. in Charter-house infra comitatum Middlesex ad humilem petitionem & fola custag. & onera Thomæ Sutton Armiger, in nominibus & ad usum ill. qui nominantur Gubernatores, ut prædict. in omnia & fingula præmissa prædicta cum pertinentiis voc. The late dissolved Charter-house besides Smithfield unde, &c. intraver. & fuer. inde seisit', prout lex postulat, super quorum quidem Richardi Sutton & Johannis Lawe possessionem inde, postea & ante præd. tempus quo, &c. præd. Simon Baxter in eadem præmissa cum pertinentiis unde, &c. intravit & fuit inde seisit. prout lex postulat, super cujus quidem Simonis Baxter possessionem inde præd. Richardus Sutton & Johannes Lawe prædicto tempore quo, &c. in præmissa præd. cum pertinentiis unde, &c. clamant' ut duo Gubernator. Terrarum, Pofsessionum, Reventionum, & Bonorum Hospitalis regis Jacobi fundat. in Charter-house infra comitatum Middlesex ad humilem petitionem & sola custag. & onera Thomæ Sutton armig', & in nominibus & ad usum ill. qui nominantur Gubernatores, ut prædicitur, reintraver', prout præd. Simon Baxter superius versus eos queritur: Et ulterius Juratores prædicti dicunt super sacramentum suum prædictum, quod prædicti Richardus Sutton & Johannes Lawe in prædicto Actu Parliamenti de an. septimo Jacobi regis suprad', & in prædictis Literis Patentibus dicti domini regis, & in præd. Indentur. barganiæ & venditionis fact. inter prædict. Thomam Sutton ex una parte & prædict. Georgium Archiepisco-

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pum Cantuar. & al. ex altera parte, geren. dat. primo die Novembris anno regni dicti domini regis nunc nono supradicto nominat', & præd. Richardus Sutton & Johannes Lawe modo defend. funt unæ & eædem personæ, & non aliæ neque diversæ; & quod præd. Thomas dominus Ellesmere, Rob. comes Salisbury, reverend. in Deo pater Lancelot. Epifcopus Elien', Tho. Foster, Henric. Hobart, Johannes Overal, Henricus Thursby, Galfridus Nightingale, Richardus Sutton, Johannes Lawe & Thomas Browne in prædicto actu parliamenti de an. septimo supradicto nominat, ac in pradictis literis patentibus domini regis, & in prædicta Indentuza bargania & venditionis fact', Georgio Archiepiscopo Cantuar. & al', funt unz & eædem personæ & non al. neque diverf. Et prædict. reverendus pater in Deo Georgius Archiepiscopus Cantuar', Thomas dominus Ellesmere, Robertus comes Salisbury, Johannes Episcopus Lond', Lancelot. E-piscopus Elien', Edward. Coke, Tho. Foster, Henric. Ho-bart, Johannes Overall, Georgius Mountaine, Henricus Thursby, Galfrid. Nightingale, Richardus Sutton, Johannes Lawe & Thomas Browne in prædictis literis patentibus prædicti domini regis mentionat, & in prædicta Indentura barganiz & venditionis fact. inter prædictum Thomam Sutton ex una parte & prædictum reverendum patrem in Deo Georgium Archiepiscopum Cantuar', Thomam dominum Ellesmere, Robertum comitem Salisbury, Johannem Episcopum Lond. Lancelot. Episcopum Elin', Edwardum Coke, Thomam Foster, Henricum Hobart, Johannem Overal, Georgium Mountaine, Henricum Thursby, Galfridum Nightingale, Ricardum Sutton, Johannem Lawe, Thomam Browne, & Johannem Hutton ex altera parte, funt un. & ezdem personz & non al. neque divers. Et quod omnia maneria, terræ, tenementa, & hereditamenta in prad. actu parliamenti de an. septimo supradicto, & in præd. literis patentibus per præd. dominum Regem præfato Thoma Sutton concess. Et in prædicta Indentura barganiæ & venditionis fact. inter prædictum Thomam Sutton & præfatum Georgium Archiepiscopum Cantuar. & al. (except. terr', tenement. & hæreditament. voc. The late diffolbed Charters house betwee Smithfield, perquisit, de præd. Thom. comite Suffolk.) mentionat. funt una & eadem maneria, terr', tenementa, & hæreditamenta, & non al. neque divers. Et quod pred. terr. tenement. & hereditament. vocat. The late blb foldet Charter-house besides Smithfield, in præd. Indentura barganiæ & venditionis fact. int. præd. Tho. Sutton & præfatum Thom. comitem Suff. & al. geren. dat. nono die Maii

anno regni dicti domini regis nunc nono fupradicto, & in prædictis literis patentibus prædicti domini regis Thomæ Sutton confect'; & in prædicta Indentura barganiæ & venditionis inter predictum Thomam Sutton & præfatum Ar-chiepiscopum Cantuar. & al. similiter mentionat', unde, &c. funt un. & eadem terr', tenement', & hereditament', & non al neque divers. Et quod prædictus Thomas Sutton in prædicto actu parliamenti de an. septimo supradicto nominat', & in prædict' script. prædicto Johanni Hutton fact', & in omnibus aliis conveianc, scriptis, & literis patentibus prædict. nominat', est una & cadem persona & non al. neque divers. Et quod prædictus Georgius Mountaine tempore confectionis prædictarum literarum patentium prædicti domini regis fuit & nunc est decanus Ecclefiz Collegiatz Westmonasterii. Et quod prædictus Georgius Mountaine in prædictis literis patentibus prædicti domini regis nominatus; & prædictus Georgius Mountaine in prædicta Indentura barganiæ & venditionis per præfatum Thomam Sutton prædict. Georgio Archiepiscopo Cantuar. & al. ut præfertur confect. nominar. est una & eadem persona & non al. neque divers. Et quod prædictus Johannes Hutton in præd. script. nominatus & in prædicta Indentura barganiæ & venditionis prædicti Thomæ Sutton nominat', est una & eadem persona, & non al. neque divers. Sed utrum super tota materia prædict. per Jur. præd. in forma prædicta compert, prædicti Richardus Sutton & Johannes Lawe funt culpabil. de transgress. prædict. necne, iidem Jur. penitus ignor'; & pet. inde advisament. cur. hic, &c. Et si super tota materia præd. per Jur. prædict. in forma præd. compert. videbitur cur. hic quod præd. Richardus Sutton & Johannes Lawe funt culpabil. de transgr. pred. tunc iidem Jur. dicunt super sacrament. suum præd', quod præd. Richardus Sutton & Johannes Lawe funt culpabil. de transgr. præd. prout præd. Simon Baxter superius versus eos inde queritur; & tunc affidunt dampn. ipfius Simonis Baxter occasione transgr. ill. ultra mis. & custag. sua per ipsum circa sectam suam in hac parte apposit, ad unum denarium & pro mis. & custag. ill. ad duodecim denar': Et si super tota materia præd. per Jur. præd. in forma præd. compert. videbitur cur. hic qd. præd. Richardus Sutton & Johan. Lawe non funt culpabil. de transgr. præd', tunc iidem Jur. dicunt super sacram. hum præd. qd. præd. Richardus Sutton & Johan. Lawe non funt inde culpab. prout iidem Ric us Sutton & Johan. Lawe superius pro se allegaver'. Et quia cur. dn'i regis hic de judicio tuo de & sup' przmist. reddend. nondum advisatur, dies inde

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dat. off partibus quod coram domino rege apud Westm. uso: diem Mercurii prox. post quinden. Pasche, de judicio suo de & fuper præmissis audiend eo quod cur. domini regis hic inde nondum, &c. Ad quem diem coram domino rege apud Westm. ven. partes præd. per attorn. suos præd'; & quis cur. domini regis hic de judicio fuo de & fuper pramiff, reddend. nondum advifat', dies inde ulter. dat. eft partibus pred coram domino rege apud Westm. usque diem Vener. prox. post Crastin. sancte Trinitat de judic. suo inde d', eo quod cur. dicti domini regis hic inde nondum, &c. Super quo vis. & per cur. dicti domini regis nunc hic lemus intellectis omnibus fingulis præmiffis maturaque deliberatione inde habita, pro eo quod videtur cur. domini regis nunc hic super tota materia præd. superius in forma præd. comperta, quod præd. Richard. Sutton & Johannes Lawe non funt culpabil. de transgr. præd', prout iidem Richardus Sutton & Johan. Lawe superius pro se allegaver', conf. est quod præd. Simon Baxter nihil inde capiat per billam fuam præd. Sed pro falso clam, suo inde sit in m'ia; & prad. Richardus Sutton & Johannes Lawe cant inde fine die, &c. Et ultetius conf. eft quod præd. Richardus Sutton & Johannes Lawe recuper. versus præsat. Simon. Baxter viginti quatuor libr. pro mis. & custag. suis, per ipsos circa desens. suam in hac parte sustent, eisdem Richardo Sutton & Johanni Lawe ex affensu suo per cur. dicti domini regis nunc hic juxta formam statut. in hujulmodi casu inde nuper edit. & provis. adjudicat'; & præd. Richardus Sutton & Johannes Lawe habeant inde executionem.

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Sutton's Hospital.

ICH. 10 Jacobi Rot. 574. In the King's Bench Jenk, Cent. between Sim. Baxter, Plaintiff, and Ric. Sutton 270. and John Lawe, Defendants, in Trespass, De eo quod ipsi 30 May, 10 Jac. a Capital Messuage called the Charter-kouse, in the Parish of St. Sepulchres, in the County of Middlefex, freger & intraver ; upon Not guilty pleaded, the whole special Matter was found, which was adjourned out of the Court of the King's Bench by the 2 Balif. 146. Judges of the same Court, into the Exchequer-Chamber; and it was argued at the Bar for the Plaintiff by John Walter of the Inner Temple, Telverton of Grays Inn, and laftly by Bacon Sollicitor General; and for the Defendant by Coventry of the Inner Temple, Hutton Serjeant at Law, and by Hobart Attorney General. And the Plaintiff's Counsel argued strongly in general. 1. That there was not any Incorporation created by the King's Letters Patent, dated 22 Junii 9 Jac. Regis. 2. Admitting the Incorporation was good; yet there was not any Foundation made by Sutton according to the Authority given him. That the Bargain and Sale made by Sutton, bearing Date t Nov. 9 Jac. was utterly void, and by Consequence all the said Possessions descendible to the Plaintiff in particular. And in the Argument of this Case, these Points upon these Grounds were moved, r. It was 1 Objection: bjected that by the Act of Parliament 9 Feb. 7 Jac. Pater 24. h. Regis in the Record mentioned, An Hospital was legally erected and incorporated at Hallingbury in the County of Effex; and all the said Manors given to it; and y Consequence the said Corporation made after the said

A& by the Letters Patent 22 Junii 9 Jac. Reg. was utterly void. Note Reader, the faid Act can't give the faid House called the Charter-House, for Sutton purchased it afterwards, viz. 9 May 9 Jac. Reg. as by the Record appears.

Objection. Poftea 25. b.

2. That no Hospital was founded by Sutton, & therefore the Incorporation failed; because Sutton had the King's Licence to Found, Erect and Establish an Hospital, which was an Act precedent to be performed by Sutton before the Incorporation, which he hath not done; and so he has not purfued his Licence; which Licence the King might have countermanded; and which was countermanded in Law by the Death of Sutton.

Objection. Postea 28. b.

That the King by his Charter can't name the House and Inheritance of Sutton to be an Hospital, for that would

Objection, Postea 29. a.

be to give a Name of an Hospital in alieno folo,
4. The Place of every Corporation ought to be certain, for without a certain Place there can't be any Incorporation; but here the Licence to Sutton is to found an Hospital at or in the Charter-House; so that he may found it in all or any Part of the same House, and therefore till Sutton has founded it certain, there is not any Certainty of the Place, and by Confequence no Corporation. To which was added, that a Place by a known Name is not sufficient to support the Name of an Incorporation, but it ought to be described by Metes and Bounds; and divers Precedents were cited and shewed, where the Scite of Hospitals, Prio-

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4. Objection. Pultea 31. 2.

ries, &c. were so particularly described.

5. The King by his Letters Patent intended to make a present Incorporation, and fo his Words expresly import, viz. From henceforth, &c. And yet no Incorporation can be till Sutten has named a Master, and the Letters Patent bear date 22 Junii Anno 9. and the Writing of Nomination 30 Octob. Anno 9. and so the Letters Patent are repugnant in themselves and void.

6. Objection. Postea 32. 2.

6. Until there be an actual Hospital and Poor in it, there can't be Governors of them, for Governors ought not to be idle, or as Cpyhers in Algebra; for Governors and Govern ment are relative, que sunt simul tempore, and as well in his Will as in other Instruments, he has called it many Times his intended Hospital.

7. Objection. Puttea 33. 2.

7. To every fuch Corporat. a Foundation is requifite; and here is not any Foundation made by Sutton. For first be ought to have per verbe prescripta & in terminis terminantimis

PART X. The Cafe of Sutton's Holpital.

nantibus, founded, crecked and established the said House of Charter-House an Hospital, &c. And it was compared to Cases of Exchange, Frankalmoigne, Dedi, Warrantizo, 4 Co. 39. b. Frankmarriage, que sunt verba legalia & incompatibilia, &c. And divers Precedents were shewed to the Justices of Erection of Hospitals, Schools, &c. wherein the faid Words of Fundo, erigo, &c. were used. Secondly, Before such Poster 28. 2. lawful Foundation made by Sutton, a Stranger could not 30. a. 33. b. have given any Land or other Thing to the faid Governors. Thirdly, Without such Foundation, in Time to come it shall not be known who should be the Founder, whereupon Confusion would ensue.

8. The Nomination of the Master made by Sutton is 8. Objection. void for two Reasons, one, that he was nominated to be Poster 34.2. Master but at Will, where he ought to be nominated for Life, in as much as he is to have a Freehold in the Land. Also there ought to be at least an actual Hosp, founded by Sutton according to his Licence, before he could nominate a Master of it; for otherwise it should be a Mathematical

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o. The faid Bargain and Sale made by Sutton to the faid o. Objection. Governors was void for three Reasons. 1. That the Mo-Poster 34 2. ney which was the Confideration thereof was paid by the 26.2. private Persons of the Governors, and therefore the Bargain and Sale of the Manors, &c. can't enure to them in their Politick Capacity. 2. The Habendum is to the Governors upon Trust and Confidence, and a Body Politick aggregate of many can't stand seised of a Trust or Confidence to the Use of another. 3. Because no Hospital was founded by Sutton according to his Licence, and for all the other Objections made against the Foundation and Incorporation, the faid Bargain and Sale was void, and by Confequence all the said Manors descended to the Plaintiff as Cousin and Heir to Sutton.

10. That no Hospital was incorporated by the said Let- 10, Objection. ters Patent, and therefore it was objected, That the King Poster 34 2 could not incorporate them by the Name of Governors, Ec. of the Hospital, but of an Hospital in Law, or a legal Hospital, as it was called; for the Governors can't plead, that they are feiled in jure Hospitalis sui, because in Law there was not any Hospital.

Which brief Report I have made of these Objections, bebaule I think 'em, or the greater Part of them were not worthy to be moved at the Bar, nor remembred at the Bench. And that this Case was adjourn'd to the Exch. Chamb. by the

The Judges who argued in the Case.

Poft. 34. 2.

Maxim.

Viscera caufæ.

1. Part of the K.'s Charter, Answ. to 1. Obj. Ansea 23. a.

Justices of the King's Bench, more for the Weight of the Value, then for the Difficulty of the Law in the Cafe. And the entire Record, as appears before by the Exceptions, ought to be the Case, the which was argued openly in the Exchequer-Chamber by all the Judges of England, and Barons of the Exchequer, (except the Chief Justice of the King's Bench, who was then fick, viz. Sir Rob. Houghton, Sir Augustine Nicholls, Sir John Dodderidge, Sir Humfrey Winch, Sir Edward Bromly, Sir John Croke, Sir James Altham, Sir George Snigge, Sir Peter Warburton, Sir Lavorence Tanfield Chief Baron, and Sir Edward Coke Chief Justice of the Common Pleas. And it was resolved by them all in their Arguments (except by Baron Snigge and Justice Croke) that Judgment should be given against the Plaintiff, Et quia rectum est index sui & obliqui. A Right Line makes Discovery not only of that which is Right, but of that which is wrong and crooked; and the Confirmation of the Right and Truth, is the Confutation of Error and Falshood. I will report the Effect of the Reafons and Causes affirming and confirming the Resolutions of the Judges, which are of so great Authority, Perspicuity and Gravity, that it is not necessary that the Objections should have any particular Answer, and yet for the Satisfaction of all, every one of them shall be particularly answered. And because this Case chiefly depends upon the Letters Patent, and the best Exposition of the King's Charter is upon the Confideration of the whole Charter, to expound the Charter by the Charter it self, verba carta regiæ aque portant fuam expositionem; and the King's Letters Patent in this Case are viscera causa, & expositio que ex visceribus cause nascitur est aptissima & fortissima in lege, all the Parts of the Letters Patent were confidered, and every material Part thereof explained according to the true and genuine Sense, which is the best Method, upon the Consideration of many others, for the more clear Report of this Cale.

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The first Part of the said Charter contains a short Recital of two Things, 1. of the Title of the Act of 9 Feb. Anno 9. viz. An Act to confirm and enable the Erection and Establishment of an Hospital and free Grammar-School, done and intended to be done by Thomas Sutton, Esq; which Title proves that no Hospital, &c. was founded by the Act it self; but the Scope of the Act was to enable Sutton to erect and establish an Hospital, &c. and therefore the Title saith, intended to be done and performed by Thomas Sutton, Esq. And that also appears by divers Parts of the Body of the Act, which are all in futuro & nihil in prasent.

1. Be it therefore enacted, That in the Town of Halingbury, Esc. there may be builded one meet House for Abiding of poor People and Scholars, &c. which are Words de futuro, and it is not certain in what Part of the Town the House shall be built, Ec. 2. And that the same shall and may be called and named the Hospital of King James; which are Words also de futuro. 3. And that the Lord Archbishop of Canterbury, &c. Shall and may be the Governors, &c. 4. And that the same Governours, &c. shall for ever hereafter stand and be incorporated: Which Words ought to be intended to take Effect after the Erection of the Hospital, &c. in a certain Place, &c. and so the Construction is in futuro, which well appears by the Words de futuro following, and may have perpetual Succession 5. And may for ever hereafter have, hold, and enjoy, Lordships, Manor, &c. without Licence of Alienation or Licence of Mortmain. By which it appears, that this Clause is not in Effect, but a Licence to give Manors, Lands, &c. held in Capite without other Licence of Alienation, and also without other Licence of Mortmain. But this Clause, was superfluous and impertinent if the Land should pass by the Act it self, for then no Licence in those Cales was requifite. And without Question if it were admitted that there was a Corporation, yet no Lands are given to it by those Words de futuro. Also although the said Lands were given them, yet the King by his Letters Patent can erect and incorporate an Hospital in the Charter-house, which was purchased after the Act, and the Action of Trespass in the Case at Bar is for a Trespass done in the Charter-house. But it was resolved by all the Justices and Barons of the Exchequer (except Justice Croke) that the Act of 9 Fac. doth not incorporate the Governors, &c. but in futuro, which never did nor can take Effect; and by Consequence no Land was or could be given thereby. The 2d Branch of the Recital is of the Purchase of the The 2d Brarch Charter-house after the Act, which as it is there rehear- of the Charter. led, is more fit and commodious than Halingbury to be converted into an Hospital.

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nii. Be In the second Part Sutton is a Suitor and Petitioner to the King for four Things, 1. To give Licence to found, erect and establish an Hospital-house, &c. and free Grammar School, &c. at or in the Charter-house, wherein has been observed the Incertainty of the Suit, viz. at or in the Charter-house, but of that hereafter. 2. To incorporate the Governors bereafter named, so that Sutton himself names the Governors which the K. incorporates. 3. By such Name of Incorporation

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as is hereafter mentioned to have Capacity and Ability, &c. by which also it appears, that Sutton devises and prescribes the Name of the Incorporation; and by all these three Clauses it appears, That the Suit of Sutton and his express Consent was, that the Governors should be named of the faid House called the Charter-bouse. 4. Sutton was Suitor, that the Governors, &c. might take in Mortmain for the better Maintainance of the said Hospital, free School, Preacher, &c.

The 3d Part of the Charter. The Divition of the Charter.

The third Part of the Letters Patent contains Grants and Acts made by the King in two Manners, fc. by Way of Licence and by Way of Grant; of the Licences fome are requifite, some abundant and not requifite; and some requifite for the Sustentation of the Poor, &c. and not to the Effence of the Corporation; and of the Grants, some are in prasenti, and some in future, and of each of them some are of Necessity, and some explanatory and not of Necessity; and those which are of Necessity, some are of Necessity to the Creation of this Body politick, and some to the Continuance and Preservation of it. And into those Branches all the faid Letters Patent are divided, which shall be observed as they arise and have Place in the fame Letters Patent: But before all the Licences and Grants, the King prefixes a Preamble, sc. The King affecting so good a Work, of his Princely Disposition and Care for the Furtherance thereof, and that the same may take the better Effect, &c. (wherein appeareth the Honour, Charity, and pious Disposition of the King) giveth Licence to T. Sutton, his Heirs, Executors, Administrators and Alligns, at all Times hereafter at their Will and Pleasure to place, erect, found and establish, at or in the said House called the Charter-house, one Hospital House and Place of Abiding for the Finding, Sustentation, and Relief of poor aged, maimed, needy, or impotent People, &c. Also to erect, found, &c. one free School for the Instruction, Teaching and Maintenance of poor Children or Scholars, &c. And to place and maintain a learned Schoolmaster and Usber to teach and instruct the faid Children in Grammar. And also one learned and godly Preacher, to preach and teach the Word of God to all the said Persons, poor People and Children, Members and Officers at or in the faid House. This in the first Place contains the End of Sutton's Piety (a)Co.Lit.70.b. and Charity: For (a) Sapiens incipit a fine, & quod primum est in intentione, ultimum est in Executione. And that was a grand Motive to the King of his Royal Authority to give him Means, sc. by Creation of a capable Body politick by Way of Incorpration, to have a perpetual Succession to perfect and perpetuate fo pious and charitable a Work And

Answer to the 2d Objection. Antea 23. b.

And that the Incorporation ought to precede the Execution of this Licence, is evident by the Words and Coherence of the Letters Patent, fc. for this Licence is in futuro, fc. to Tho. Sutton, his Heirs, Executors, Administrators and Affigns, at all Times bereafter at their Will and Pleasure, &c. fo that it is future as well in Persons, Heirs, Executors, &c. as in the Thing to be done. But when he comes to the Clause of Incorporation, he doth it per verba de presenti tempore. And the Said Persons and their Successors by the Name,&c. We do by these Presents for ever hereafter really and fully incorporate, &c. By which it follows, that the Incorporation being present, and the Execution of this Part of the Licence future, the Incorporation ought of Necessity to precede the Execution of the Licence. Then forasmuch as the principal Foundation of the Scruple was conceived upon these Words, to found, erect, and establish, the true Etymology and genuine Sense of them was considered; and ex vi termini fundare, nihil aliud est quam fundamentum jacere seu ponere, &c. to lay the Foundation of a Building; and in this Sense the Holy Ghost (which moved Sutton to this Work of Charity) in the Scripture takes it. And therefore in the (a) 1 Regum cap. 6. 37. Fundata est domus anno (a) 1Reg. c.6. primo, & anno 11 perfecta fuit domus in omni opere suo. ver. 37, 38.

And (b) 1 Regum cap. 16. 34. Edificavit in diebus illis (b) 1Reg. c. 16: Hiel de Bethel Jerico in Abiram primitivo suo fundavit, ver. 36. & in Segub novissimo fuo posuit portas. By which it appears, that to found is to lay the Foundation of a Building, which is the first mechanical Part of Architecture. Then when the Foundation is laid, then comes the Erection of the House, as it is said by the Son of Sirach 49. 15. Erexit Eccl. c.49 v.17 nobis muros, & erexit domus nostras. And although the Foundation be well laid, and thereupon a Building well erected, yet it ought to be well conjoined and established, and therefore this Word establish is added to make the Building have Continuance. 2 Reg. 13. Stabiliam thronum ejus; that is, I will make his Throne to have Perdurance and Continuance. So that to found, erect, and establish, are Opera Laboris, & Labores Architector, and that appears by the Words of the Charter it felf, sc. The K. affecting so good a Work, tam bonum opus: Moreover the subsequent Words prove it also; to found, erect, and establish, what? an Hospital-burge. So that it clearly appears, that the Effect of this Licence is to make Poft. 31.2.b. ht and to finish and furnish an Hospital-house for the Habitation of the Poor, &c. See after, Mich. 34 & 35 Eliz. the Case of the Hospital of Bridewel for the Exposition of these Words, fundo, erigo, & stabilio, which is a stronger Case than this is. And this Word Place in the first Place is to be intended, as hath been faid, in the last Place, scil. To place Poor in it,

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to erect a free School for the Instruction of Youth, and for the Maintenance of a Preacher. But how shall this holy and charitable Intention (that it should remain in Succession for ever) be brought to an End and Effect? The Charter it felf shews it in Effect in this Manner: It is impossible to take in Succession for ever without a Capacity; and a Capacity to take in Succession can't be without Incorporation; and the Incorporation can't be created without the King; for this Reason the Charter saith, And for the Maintenance and Continuance of the said Hospital, &c. and that the same may take the better Effect, that the Said Persons, &c. be one Body corporate and politick, to have perpetual Succession for ever to endure. We do by these Pre-Jents for ever hereafter fully and really incorporate, &c. to have Capacity and Ability to take, &c. Without this Capacity the End can't be effected, for (a) Inhabitants of a Town, or other fingle Persons (who have not Capacity to take in Succession but only to their fingular Heirs) have Capacity to take an Incorporation; and after their Incorporation they have Capacity to take in Succession any Lands, Tenements, or Hereditaments; unde sequitur, that the Incorporation which gives Capacity ought to precede the Donation of any Land, &c. Another Licence is given to this new Incorporation to take in Mortmain. This Licence is not of Necessity, either of the Essence of the Incorporation, or of the Continuance of it; but yet it is requifite for the Establishment and Maintenance of the End, scil. to have the Poor sustained, and Scholars instructed, &c. For they can't be maintained without a Revenue, and the Revenue (as has been faid) they can't take and retain without a Licence in Mortmain; and therefore thole two, sc. Incorporation and Licence in Mortmain ought to precede the Donation. These Words to found, erect, and establish an Hospital-house can't be extended to the Incorporation, for that belongs only to the King, and that the King makes; nor to any Donation, for as yet (as hath been faid) there is not any Capacity; Ergo it extends only to the Building and Finishing of the said House to be a fit Habitation for Poor, &c. Sutton thinking and rethinking that as well the Incorporation as the Licence in Mortmain were in their several Degrees requisite to bring his good and charitable Purpose to Effect, to the End that the King would grant that which was only in his Power to grant, and which he himself without the King could not do; he was a Suitor to the King to grant him Licence to do that which of himself in Respect of the Ownership of Land he might do without the King, scil. To build, fi nish, and furnish the said House for the Habitation of Poor,

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Poor, as well before the Incorporat. as after : But to give it Succeffion, &c. as hath been faid he could not, and therefore this Licence was but explanatory to declare what Sutt. as Owner of the Land might do, either with the K.'s Licence or without the K. and therefore the K. could not countermand this Licence, because it is but declaratory of that which Sutt. might do as Owner of the Land without any (a) Licence; and this (a) 3 Inft. 202. appears by the Book in 3 H. 7. Fitz. Grant 36. the Record whereof I have seen, between J. Buckland Vintner Pl. in an Action of Trespass, and Rich. Fowcher Chaplain Def. Term. Sanct. Mich. 2.H.7. Rot. 155. in the K.'s Bench, and in the Report at large, (b) 2 H.7. 13. a. b. where the Case in Effect is, (b) Br. Patent44 That K.H.4. by his Letters Patent, an. 6 regni sui, reciting that Rob. Ramsey was seised in Fee of an House in the Parish of St. Margaret in Lond. called the Sun, &c. notwithstanding the Stat. of Mortmain de gratia sua speciali, and for 20 l. gave Licence to R. Ramsey, that he might give 20 Marks Rent, issuing out of the said House, (c) cuid' capellano divina cele- (c),1 Rol. ;13. branti ad altare beate Mar' in Eccles. S. Magni London singul' diebus pro salubri statu præd' Rob' & Johan' uxor' suæ, &c. Habend' & tenend' eid' capellano & saccessorib' suis capellan' Cantaria prad' divina in Eccles. prad' ad altare prad' pro salubri statu, &c. juxta ordinationem præd' Rob. in hac parte faciend' celebrat' imperpet', &c. And afterwards the said Rob. Ramsey by his Deed indented tripartite, 10 Jun. 1407. founded, ordained and erected the faid Chauntry, and ordained and named one John Medow to be the first Chaplain to do the faid divine Services; and further by the said Deed granted to the said J. Medow the 1st Chaplain 10 Marks of yearly Rent issuing out of the said House, To have to him and his Successors Chaplains of the said Chauntry at 4 usual Feasts in Lond. to be paid, with Clause of Difires to him and his Successors; and further appointed by the same Deed, that he himself should present to the said Chauntry during his Life; and after his Decease, that Johanna his Wife should present to it during her Life, and after her Decease the Parson and Churchwardens of the said Church of St. Magnus, and their Successors; and afterwards the said John Medow died, and after divers Vacations the Defend. Rich. Fowcher was presented to the said Chauntry, who for the faid Rent arrear entered into the faid House the Door being open, and took a Cup of the Plaintiff's for a Distress, &c. for which Taking the Action was brought, upon which Matters the Parties demurred in Law: And this Case was adjourn'd into the Exchequer-chamber, and there before all the Judges of England divers Objections were made against this Licence and Grant. i. Bécaule they were cuidam capellano, and named none in certain; and when the King's Grant is uncertain it is void; as if the King

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1 Rol, 513.

(a) Perk.fed.65 licenfesone to give 20 Marks Rent (a) cuid Abbati, the Grant is void, because it is incertain, 2. There is not fuch Chaplain till R. Ramfey has named and ordained one, fo that it appears. that the Grant would be to him who was not in rer natura; as if the K, gives Licence to grant to the Major and Commonalty of Islington, it is void where there is not any such Incorporat. altho' the Inhabitants of Ming. be afterwards incorporated by the Name of Major and Commonalty, because there was ho fuch Corporat. in rer' natura at the Time of the Grant. 3. It was objected, that the K. had not made any Incorporat. in that Case, and Incorporat. is a Thing to be made only by the K. himself; and these Words justa ordination per Rob' Ramsey fiendam, should not enable the faid Ramsey to make an Incorporat, for the K. can't give Licence to any to make an Incorporat. but the faid Words would give him Power to make Ordinances, first touching Masses and other divine Services, 2. Of what Manner of Habit he should be, 3. To have perpetual Succession, sc. elective, presentative, or donative, and that is the Effect of the said Words, and not to make a Corporat. and the K.'s Grant should not be taken by Implication, sc. by the Words to make an Incorporat. and also to give Licence to grant the faid Rent, for then the K.s Grant would enure to 2 Intents. 4. Admitting that there should be an Incorporat, by Implication, yet the Incorporat, ought to be before the Licence, and here the Licence is before the Incorporat. and therefore void, 5. The Grant ought to have been that the K. gave Licence facere & erigere Cantar, &c. and there were not any such Words in the Charter, but only Licence to granta Rent, &c. ouid capellano, &c. 6. The Licence is secundum ordination per R. Ramsey fiendam, and therefore the K. is deceived, because he could not have Knowledge what Ordinance it would be. 7. It was objected, that the Diffress was without Warrant, and void, because the Licence did extend to grant a Rent only without Mention of any Distress. Which Objections I have here collected out of the Book reported at Length, 2 H. 7. 13. a. b. and the Report of Fitz. in 3 H.

Br. Patent 44.

7. Grant 36. and out of the Record it self. As to the 1st and 2d Object. it was resolved, that the Grant was good, for all the Grants of Chantries are of such Form, sc. cuid capellano, and altho' there be not such Chaplain at the Time, it is not to the Purpose; for if the K. grants to the Commonalty of Islington that they shall be incorporated of a Major and Bailiffs, and that they have Power to chuse one, it is good, altho' the Election of the Major is future. So note Reader, a Difference betwixt an Estate or Interest which none can take without present Capacity, and a Power, Liberty or Franchile, or Thing newly created, which may take Effect in futuro. As to the 3d it was refolved, That where the King by his Charter faith cuidam capellano, that was a fufficient Incorporation; and when he faith in the Habendum fibi E Jug-

& successorib' fuis, that makes a sufficient Succession. And so note Reader, this Grant of the K. enures to (a) 3 Intents, fc. (a) 2 Rol. 200. to make an Incorporation, to make a Succession, and to grant a Rent. As to the 4th it was refolved, that where it was objected that the Licence to found the Chauntry should be 1st, and to grant after, that is not necessary; for it is not material which is before, (for the Law will construe that to precede which ought to be first) but here they are fimul & semel. As to the 5th, That in the Licence there were not Words of fundure, erigere, facere, it was refolved, That notwithstand. that the Grant was good. Nota ex box Reader, that to the Essence of a Chauntry or other Body politick, 2 Things are only requifite, sc. an Incorporat. and a Gift, and not any Words of fundare, erigere, & stabilire, or Words to such Effect; for no Antea 24.3. fuch Words were contained in the faid Grant of H.4. and yet Post. 30.2.33.b. it was adjudged a good Chauntry lawfully incorporated and founded; and if fuch Words had been necessary and requisite in Law, the Judgment ought to have been given against the Chauntry, because they were omitted in the K.'s Grant. And thereby it appears, that in the Case at Bar they were explanatory and of Abundance; which is a Judgm. in the Point, by the Resolution of the Justices in the Exchequer-chamber. As to the 6th Point it was refolved that these Words, secundum ordinationem per (b) R. Ramsey siendam, import suffici- (b) 1 Rol. 513: ent Certainty, fc. to enable Ramsey to ordain, 1. What Masses and other divine Services should be celebrated. 2. Of what Habit or Order the Chaplain should be, and 3. Whether he should be elective, presentative, or donative: By Force of which Words Ramfey in the Case at Bar ordain'd it to be presentative by the Rector of the Parish of St. Magnus for ever. As to the 7th Objection, it appears by the Report of Fitzherbert ubi supra, that the Opinion of the 2 Chief Juflices Huffey and Brian, and Starkey Chief Baron, and Fairfax Justice, was, That the Distress was without Warrant but Townsend conceived it to be good. But inspecto recorde, it was adjudged that the Distress was good and well warranted by the Grant; for the Chauntry-Priest distrain'd in the faid House for the Rent, and his Distress adjudged lawful, and the Plaintiff barred; and the Reasons, as I conceive, were, because the King's Charters, made for the Erection of pious and charitable Works, shall be always taken in the most favourable and beneficial Sense; and the most beneficial Rent that a Man can grant is a Rent-charge, 2. A Difires is a necessary Incident to the Rent, for without that the Grantee would be without Remedy: (c) Verba funt accipienda (c) 4 Co. 21.2. cum effectu, and Words are to be taken with the Effect. (d)2 Ed. 3. 3. Which Case I have cited more at large, because it is (4) 4H.7.13.2.b E 4

notable and pertinent, and stronger (as I conceive) than the Case in Question. 2dly, Power is given to Sutton to place a Master of the said Hospital. 3. At all Times hereafter to place, erect, found, and establish in the said House, &c. one free School for Instructing Youth, (which well expounds the precedent Words concerning the Hospital, for those Words extend only to make fit and to finish and furnish a Grammar-school within the faid Charter-bouse) and a learned Preacher to teach all in the Word of God. 4. We do by these Presents, ordain, constitute, The 4 Branch limit and appoint, That the Said House and other the Premisses shall from henceforth for ever hereafter be, remain and continue, and be converted, employed and used for an Hospital and House, and Place for Abiding, &c. And Shall for ever bereafter be named, incorporated, and called the Hospital of K. James, founded in the Charter-house within the County of Middlesex, at the humble Petition, and at the only Costs and Charges of T. Sutton, Esq; And the same Hospital and free School by the Name of the Hospit. of K. James, &c. We do sirmly by these Presents, erect, found, establish and confirm, to bave Continuance for ever. By this Clause the King in presents gives the Name of the Hospital, but as it appears before, Sutton had devised it, and had sued to the King to name it accordingly; and that the Name of the Incorporation it self, sc. at the humble Suit, &c. of T. Sutton imports, fo that as it is said in 38 F.3, 14.b. and 21 E. 4.56.a.b. the (a) Name of Incorporation is as a proper Name or Name of Baptilm: In this Case Sutton as Godfather gave the Name, and by the same Name the King baptized the Incorporation: By which it appears, that the Objection, that the King could not give a Name to an House which is the Inheritance of another, is not of any Value, for here Sutton has confented and affented to it; and all this is done at his humble Suit; and this Objection tends to the Diffolution of all ancient Deans and Chapters; for at first, as appears in the 3d Part of my Reports in the Case of the Dean and Chapter of Norwich: All the Posfessions were to the Bishop, and yet by his Assent the Dean and Chapter were incorporated and named of the Cathedral Church, which did then belong to the Bishop and afterwards a certain Portion was affigned to the Chapter; fo that the Chapter was before that they had any Possessions; and that is the Reason that of common Right, the Bishop is Patron of the Prebendaries, because their Possessions were derived from the Bishop, and therefore he was Founder and Patron:

And therewith agree 17 F. 3. 40. a. b. 25 Aff. pl. 8.

10 Edw. 3. 1c. 50 Ed. 3. 26. b. 15 H. 7. 11. So that at

first the Dean and Chapter were by the Affent of the

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of the Charter. The Answer to Antea 23. b.

(a) 1 Rol. 512. Poltes 123. 38 E. 3. 15. a.

Palm. 495. Cr. E. 79.

3 Co. 76. b. Fitz. Qu. Imp. 70. Br. Dean & Chapt. 16. Palm. 494. 3 Co. 75. b.

Bishop incorporated and named of the Church Cathedral of the Bishop. And it was said, that Questions moved in the Exchequer used to be like Spirits which may be raised with much Eafe, but suppressed and vanquished with much Difficulty; but these Questions were like ruinous Buildings, more easily thrown down than raised and erected. And all the Arguments which have been made against this honourable Work of Charity, are hatched out of mere Conceit and new Invention, without any Ground of Law, and fuch which have any Colour were utterly mistaken. And as to the Answer to the Abjection. Exception, That the Place of every Corporation ought to be Antea 23. b. certain; and Sutton fues, and the K. licenses Sutton to found, erect, &c. an Hospital at or in the Charter-house, which was incertain; To that the Charter expresly answers, That the K. by this Clause doth ordain, &c. That the said House and other the Premisses shall from henceforth for ever hereafter be, remain, &c. and shall for ever hereafter be named and called the Hospital of K. James, founded in the Charter-house: So that all the House and other the Premisses are baptized by the K. by the Name of the Hospital, &c. in which is no Shadow of Incertainty, and therefore Sutton as to the Licence for the mechanical Part, which (as has been faid) was abundant to fit and finish all or any Part of the House for an Hospital, &c. yet all the House it self, Gardens and Orchards. EG, are named by the Name of the Hospital. And it was obferved, That the K. by this Clause not only names the faid House to be an Hospital, but by the Name of the Hospital erects, founds, establishes and confirms; so that the K. names it, and leaves the mechanical Part to Sutton to perform. And of the same Importance is the other Objection, That a known Name is not sufficient to found an Hospital, but it ought to be described by Metes and Bounds, as in divers Precedents hath been used; for it appears in Will'm de Londres Case, 2E. 3.36. b. Adam brought a Scire facias against Will'm de 2E.3.20.b. 21.2. Londres of the Manor of E. the Def. pleaded that he himself is Master of the Hospital of St. Bartbol. and so bears a Name of Dignity not named, Judgm. of the Writ: To which the Pl. replied. That that which the Def. calls an Hospital is the Manor of East-Smithfield, and was a Manor at the Time of the Fine levied: And it was held by the Court, That by this Writ he ought to have the Manor, as that which the Manor was at the Time of the Fine levied; and whereas the Manor was made an Hospital after the Fine, by this Suit he is to defeat your Eflate and your Name, and accordingly it was ruled that the Writ was good; which proves that a Manor (which imports more Variety and Incertainty than an House known by a certain Br. Corp. rat.42 Name) may be created into an Hospital. And in 15 Ass. pl. 8. John de Derbie's Case, a Manor made Corpus Prebend'. Br. Dean, &c. 14 The 5 Clause stands upon 2 Branches: 1. For the better The 5 Clause Maintenance of the Charter.

Maintenance and Continuance of the faid Hospital, &c. and that the same may take the better Effect, and that the Re-

Verba opera-The Division of Corpora-What Things are of the Efporation.

(6) 1 Rol. 512,

1 Rol. 512.

z Rol. 512;

venues may be the better governed and employed, there shall be fixteen Governors, and names fifteen of them by express Name, and such Person as from Time to Time shall be Master, to be the first and present Governors. 2. And the said Persons and their Successors, by the Name of the Governors of the Lands, &c. one Body incorporate and politick, by that Name to have perpetual Succession for ever to endure. We do by these Presents for ever bereafter really and fully incorporate; and the Words of this Clause are Verba operativa. And it is to be known, That every Corporation or Incorporation, or Body politick and incorporate, which are all one, either stand upon one (a) fole Person, as the King, Bishop, Parson, &c. or aggregate of many, as Major and Commonalty, Dean and Chapter; and these are in the Civil Law called Universitas five Collegium. Now it sence of a Cor- is to be seen what Things are of the Essence of a Corporation. 1. Lawful Authority of Incorporation; and that may be by (b) four Means, sc. by the Common Law, as the King himself, &c. by Authority of Parliament; by the King's Charter (as in this Case) and by Prescription. The 2. which is of the Effence of the Incorporation, are Perfons to be incorporated, and that in two Manners, fc. Perfons natural, or Bodies incorporate and political. Name by which they are incorporated; as in this Cafe Governors of the Lands, &c. 4. Of a Place, for without a Place no Incorporation can be made; here the Place is the Charter bouse in the County of Middlesex. Vide 3 H. 6. Det. 20. 17 E. 3. 59. b, & 45 E. 3. 17. 5. By Words fufficient in Law, but not reftrained to any certain, legal, and prescript Form of Words. And forasmuch as good Pleading Is lapis Lydius, the Touch-stone of the true Sense and Knowledge of the Common Law, the Form of Pleading of a Corporation by Prescription is to be observed, for in fuch Case he ought to prescribe in every Thing which is of the Effence of the Incorporation. In the Book of Entries, Tit. Quare impedit 1. the Pleading is, Quoddam Hospitale Sancta Maria de Bristow de uno Magistro, & Conventu a toto tempore, &c. incorporat' fuerunt per nomen Magistri & Conventus Hospitalis Sanct' Maria de Bristow; and there it appears that there they purchased Lands and Tenements, and were impleaded without any Prescription for the one or the other, because when they are incorporated by Prescription by a certain Name, then to implead and to be impleaded, to grant and purchase, &c. are Incidents to a Body incorporate. M. 15 H. 7. Rot. 522. in Com" Banco, there tho Prescription is Custos & vicarii Collegii vicariorum in cho-

ro Hereford funt & a toto tempore, &c. fuerunt incorporat' per nomen Custodis & Vicar Collegii Vicariorum in choro Hereford': And there also they purchased and were impleaded as incidents to Incorporation. (a) Lib Intrat' Tit (a) Raft. Entr. Assessible Assessible frates, & forores fraternitatis sive 68. 2. b. guilde novem ordinum sanctorum Angelorum juxta Brainford brought an Affife; the Tenant pleads, quod in villa de Brainford est quedam fraternitas incorporata infra tempus memorie de Magistro, fratribus & sororibus novem ordinum Angelorum juxta Brainford Bridge, absque boc quod babetur aliqua talis fraternitas: which Case is reported in (b) 22 B. 4. 34. 4. where the Tenant at first (b) Br. Brief pleaded, No such Corporation, and if it be not found, and 398.

naught because two Bars, and then he pleaded, the said on 67. Plea, quod est quedam fraternitas incorporata, &c. and yet there they were infeoffed by Bocking upon Condition, and capable thereof as incident to Incorporation. And therewith agrees the Bishop of Exeter's Case in the Book of Entries, 455. (c) 2 H. 7. 17. b. the Corporation of God- (c) Br. Corpo-manchester (d) 34 H. 6. 27. a. b. in the Case of the Hospital (d) Br. Action of Wycome. Vide (e) 26 H. 8. 1. b. In 9 E. 4. 20. a. The sur le Stat. 9. Master of the Hospital of Burton S. Lazarus prescribed, Br. Pleading 11.
quod ipse & omnes pradecessores sui magistri Hospitalis Br. Assist 11.
Br. Corporatipredict a toto tempore, &c. nominati & cogniti fuerunt, on 7. &c. tam per nomen magistri Hospitalis Sancti Lazari de Fitz. Bar. 67. Burton, de ordine Sancti Lazari de Jerusalem in Anglia, (e) Br. Corpoquam per nomen Magistri de Burton Sancti Lazari de Je- (f) Br. Corrusalem in Anglia: By which it appears that this Word (g) poration 32. incorporo, or any derivative thereof is not in Law requisite (g) 1 Rol. 513. to create an Incorporation, but other equivalent Words are (b) Br. Corpofufficient, as here nominati & cogniti: And therewith agree ration 44. (b) 44 Aff. p. 9. in the Prior of Plimpton's Case, and (i) (i) 4 E. 4. 8. 2. 4 E. 4. 7. b. in the Case of the Abbot of Glastenbury, and Fitz. Brief 150. in none of these Books or Records was any mention made of these Words, (k) fundo, erigo, &c. or any other like Words; (k) Antea 24.2; for, as it has been said, they are only declaratory Words, and 28. 2. the Effect of them may be done by the Owner of the Land without any Grant. And it was well observed, that in old Time the Inhabitants or Burgesses of a Town or Borough were incorporated when the King granted to them to have Gildam (1) Mercatoriam : In the Register 219. b. where the (1) 1 Rol 113. Writ recites, quod cum inter cateras libertates civibus civitatis Winton per chartas progenitorum nostrorum quondum rezum Anglia quas per chartam nostram confirmavimus, concessum sit eisdem, quod nullus eorum qui fuerunt infra Gildam Mercatoriam placitet extra murum, &c. where Gilda fignifies consubernium seu fraternitas incorpora-ta; and upon that the Place of their Meeting and Assemblies was called the Guild-Hall, And I have seen

the Charter made by King H. I. Textoribus Lond' by which he grants to them that they shall have Gildam Mercatoriam, and a Confirmation of it made by K. H. 2. by which Charters they were incorporated. And where the Opinion of Fineux in 13 H. 8. 3. b. and of Prifot in 39 H. 6. 19 b, was cited at Bar, that a Corporation aggregate of many can't be a Body only without a Head, that was utterly denied: For at first the greater Part of the Corporation were a Body without any Head by Force of these Words Gilda Mercatoria. And that a Corporation may be aggregate of many without a Head. Vide 18 E. 2. Annuity 48. 5 E. 3. (a) Br. Corpo. 11. b. (a) 22 Aff. 67. 29 Aff. 17. (b) 2 H. 6. 9. (e) 18 H. 6. 16. a.b. 19 H. 6. 80. (d) 21 E. 4. 55. b. 56. a. b. (e) 7 E. 4. 14. a. b. 2 Marie Dyer 100. (f) And it appears by Record that Paulinus the first Archbishop of York, after he had baptized the Inhabitants of Nottingbamsbire in the River of Trent, founded a Collegiate Church in Southwell Br. Parliament of Prebendaries confecrated to the Virgin Mary, which continues a Body without a Head even to this Day. Vide for this Word Guild or Fraternity in the Book of Entries, (e) Fitz. Grant (g) 68. 37 E. 3. C. 5. 15 R. 2. C. 5. the Statute of 1 E. 6. of Chantries. In which three Things were observed, 1. how prudens Antiquitas did always comprehend much Matter in a narrow Room. 2. That to the Creation of an Incorporation the Law had not restrained it self to any Prescript and incompatible Words: 3. That when a Corporation is duly created, all other (i) Incidents are tacite annexed. And for direct Authority in this Point in 22 E. 4. Grants 30. it is held by Brian Chief Justice and Choke, That Corporation is fufficient without the Words to (k) implead, and to be impleaded, &c. and therefore divers Clauses subsequent in the Charters are not of Necessity but only Declaratory, and might well have been left out; as 1. by the same to have Authority, Ability and Capacity to purchase, but no Clause is added that they may alien, &c. and it need not, for it is Charter Decla- incident. 2. To fue and be sued, implead and be impleaded. 3. To have a Seal, &c. that is also declaratory, for when they are incorporated, they may make or use what Sealthey will. 4. To reftrain them from aliening or demifing but in certain Form; that is an Ordinance testifying the King's desire, but it is but a Precept, and doth not bind in Law. 5. That the Survivors shall be the Corporation, that is a good Clause to oust Doubts and Questions which might arise, the Number being certain. 6. If the Revenues encrease, that they shall be imploy'd to encrease the Number of Poor, &c. that is but explanatory, as appears in the (1) Cafe of Thetford School in the 8 Part of my Reports, f. 131.a.7. To be vifited by the Governors, &c. that is also explanatory;

Br. Patent 72. Br. Laches 15. Br. Corporati-Br. Patent 85. (f) Dy. 100. pl. 70. 1 Rol. 860. 2 Rol. Rep. 3 Leon. 202. Leon. 235. Noy 54. Davis 43. b. (g) Raft. Ent. (i) 1 Rol. 513. (R) I Rol. 513, Hob. 211. Claufes of the

ration 43.
(b) Br. Corpo-

(c) Firz Brief

(d) Br. Corpo-

ration 3.

ration 65.

(1) Poph. 6, .;: Moor 594. Cr. El. 288.

ratory, &cc.

for in this Case the Poor which shall be refident in the House of the Charter-House shall not be incorporated, but cert. Persons in whom the Possessions are vested, who shall not be resident there, but only to have the general Government and ordering of the Poor therein; so that this Case is out of the Statutes of 2 H. 5. c. 1. and 14 El. c. 5. for (a) if no Vifitor had been ap- (a) 2 Rol. 231. pointed by the Charter, the Governors should visit; and the 6H. 8. 14. a. Books in 8 E. 3. 28. (b) and 8 Aff. 29. do not gainfay it, where (6) 2 Rol. 229. it is held, That if the Hospital be Lay, the Patron shall visit, 230. and if Spiritual, the Bishop shall visit, so that every Hospital & Ass. 29, 31. is visitable; it is true, but in the Case at the Bar the Poor of Raym. 107. the Hospital are not incorporated, and so no legal Hospital. 8. 6odb. Abr. 34. To make Ordinances; that is requifite for the good Order and Government of the Poor, &c. but not to the Effence of the Incorporation. 9. The Exemption from the Ordinary is but declaratory, for being a Lay-Incorporation he neither can nor ought to visit. 10. The Licence to purchase in Mortmain is necessary for the Maintenance and Support of the Poor; for without Revenues they can't live, and without a Licence in Mortmain they can't lawfully purchase Revenues, and yet that is not of the Effence of the Corporation, for the Corporation is perfect without it, fo that by what has been faid, it appears what Things in genere are requifite to a compleat Body incorporate, and which are verba operativa in this Case (which are necessary to be known in every Case) in the Resolution whereof it appears how necessary it is, that the Law and Experience should joyn with their Hands together.

1. As to the 5 Objection, That no Incorporation was made Antw. to the immediately as the Letters Patent import, nor can be till the Antea 23. b. Master was named, and therefore the Charter is repugnant and void. To that it was answered, That this Objection extends to the Subversion of a great Number of Incorporations; for when a Corporation is created by Letters Patent, by the same Patent Power is given to the Body to chuse a Mayor, Aldermen, or Bailiffs, or Governors, or the like, and yet they are immediately incorporated by the same Letters Patent, and there- (6) 2 And. 203. with expressly agree Plow. Com. 592.b. in (c) Cook's Case, 21 Moor 233.

F. 4.59.b. & (d) 3 H.7. Grant. 36. vouched at large before to (d) Antea.27.2. Ist and 2d Objections. Vide 32 E. 3. Aid 39. (e) 13 E. 4.8. b. (e) Br. Corpo-16 E. 3. Grant 65. And it is true, it is immediately by the Let- ration 58. ters Patent a Corporation in abstracto, but not in concreto, till the Naming of the Master. And a Case adjudged in the King's Bench, Mich. (f) 34, & 35. Eliz. Rot. 1.72. coram (f) Antea 26.1 rege was strongly urged. The Governors of the Possessions, Revenues and Goods Hospitalis Ed. Regis Angliæ sexti brought a Bill of Debt of twenty Pounds against Elias Germaine: The Defendant pleaded, That King E. 6.

The Cafe of Sutton's Hofpital. PART X.

reciting the Care of the City of London for the Relief of Poor Men and Infants, conceffet Majori, Civib' & Communicati Lond' Domum manfionalem vocat' Briderell, &c. and there the K. declar'd his Intent, that Bridewell should be founded, erected, Sc. an Hospital for the said Poor, Sc. idem Rex ut intentio sua melior capiat effection, and to the End the Lands which should be granted to 'em should be better govern'd, per east literas patentes voluit & ordinavit qd' Hosp' pred' cum sic fundat erett & stabilit' fuer' Hofpital' E. 6. Reg' Angl Christi Bridewell, & S. Tho. Apost nominetur & appelletur imperpetuum, & qa' Major' communitas & cives civitat prad forent Gubernatores, Sc. & qd' tidem Gubern' de catero effent & forent un' corpus corporat' per nomen Gubernat' possess' reventionum & bonor Hofpital E. Reg' Angt. Christi Bridew. & S. Th' Apost', Sc. and further pleaded, qd' nullum Hofpital' quale in eiifd' Lit' Pat' mentionat' post' confect pred' literarum pat' sic fundat' erett & flabilit fuit, &c. Upon which the Pl. demur'd; and upon Argum, at the Bar and Bench it was adjudg'd for the Pl. For the faid Ordinance, that the faid House should be an Hosp. cum sie fundat', &c. fuer' is intended only of the mechanical Part of an actual Holp. fc. of the fitting and finishing of the Hos. House with Poor, &c. And this Hosp. in Intent. only is fufficient to Support the Name of a Corporat. and the Words de prafenti, Ic. qu'ind gubernat de cætero essent & forent un' corpus corpoper nomen, &c. do in Law incorporate them presently, and shall not flay till there be an actual Hosp. or till the House be fitted or furnished, which is the mechanical Part of the Hosp. fc. for the Habit. of the Poor; which is the first Thing to be obferv'd by the faid Judgmt. V. 32 E. 3. Aid 39. K. E. 3. newly founded a Priory and granted to the Monks that they might chuse a Prior, and before the Prior was chosen W. made a Lease to one A. for Life, the Remaind. to the Prior and Covent; and ina sci' fa' against A. he pleaded, that W. was seised in Fee, and leafed to A. the Remainder to the Prior and Covent who were newly founded by the K. and because there was not yet a Prior, the Right was in the K. until, and prayed aid of the K. and the Aid by award was granted, and a Writ of Procedend' came, and then A. the Def. shewed, That after the Aid granted there was a Prior made and ordained in whom the Right remained, and prayed in Aid of the Prior; and he was outled of the Aid because he had Aid before, which proves that the (a) Remaind. in such Case is good. The 2 Thing to be observed in the said Judgm. in the said Case of the Hosp. of Bridew. is, That one (b) Corporation may be made out of another Corporat. sc. the Mayor, Citizens and Commonalty of Lond. are created in their Politick Capacity Governors, &c. of the Hosp. of Bridew. y F. 3. 18. b. many Corporat. may be created one out of another, as the Dean and Chap. of Linc. are a Joint Corporat. the Dean by himself is a Corporat. and every of the Prebends is a Corporat. by himself, and in a Case so manifest this shall suffice.

(a) Co. Lit. 264. a. Hob. 33. 4 Leon. 223. Dall. 31. (b) 1 Rol. 512. Br. Corporati on 5

And as to the 6 Object. That till an Holp, be founded no Anf. to the 6 Incorporate can be, for then they would be idle and mathema-Objection. tical Governors. It was answer'd, that there was an Hosp. in pc-Antes 23. testate, and an Hosp. in exec'; also an Hosp. in potentia, and an Hosp. actu, an Hosp. re, and an Hosp. nomine, And as to the Creation of an Incorporat. an Hosp. potestate, potentia, seu nomine sufficeth; as one may by Letters Pat. be Governor of an Army before there be an Army. Vide 17 H. 6. Protection 56. And that agrees with Philosophy and Reason. Arift. lib. 3. de generationefaith, qd caro gignit carnem; and that is true in potestatebut not actu; and so a fowl as so on as it is hatcht is volatilis a volando, quia habet potest' volandi, quanqu' aet' volandi non babet: So a Child as foon as he is born is call'd rationalis, because he hath potestatem, altho' he hath not, and perhaps never will have rationem actu. And this is also prov'd by old Records, and our Books alfo, as in the Book of Entr. Tit. Annuity 32,33. Rex H. 5. quandam domum in quodam loco five folo apud Shene (and abuts and abounds the Soil) quam vocari & nuncupari voluit, Domum Jesu de Bethlem de Shene, duxitordinand' & fundand & domum illam quant in ipso fuit fundavit & erexit (which was but a nominative House, for none was then built) & idcirco locum & fol' pred' de Schene ut primar' fundationem dedit, &c. by which it appears that a void Place or Soil in which an House is intended to be built, may by the King's Charter be nam'd a House, and this nominative House shall be fufficient, as there it was, to support the Name of the Incorporat. Alfo it appears by Mat. Paris 64, &c. Polydor Virg', Chronic' Chronicor', &c. The Hosp. of S. J. of Jerusal' in Anglia was Postes 123. b. incorporated in an' 14 H. 1. and of the Templers, by the name of Magister milit Templi & confratres sui in Anglia in an' 24. Hr: and yet neither the Fabrick of the Temple, or the House of the Hosp. was founded and built, sed regnante H. 2. of the one Jord. Biset homo pig & bene nummat9, and of the other Heraclius Patriarch of Jerusal. were Founders. Vide Camba' Britan' 31 1. which proves that a void Place to support the Name of a Corporat. may by the K's Charter be named an Hospital or Temple, and it is not requifite, that there be always Truth in the Name of the Corporat. either of an Hosp, or of any other Body Politick, K. H. 8. an' regni sui 2. according to the Will of K. H. 7. granted to divers Bps. Tho. E. of Arundel, &c. Job. Fineux, and Rob. Read, Ch. Justices, J. Young Master of the Rolls, &c. who were Executors of H.7. quandam peciamterre vocat' le Savoy in the Parishes of St. Clements, and S. Mary le Strand ad intentionem qd'iidem quoddam Hospital'in& superpræd' peciam terra vocat' Savoy erigere, fundare & stabilire possint. 4 H. 8. The K. licenced 'em quodd' Hospit' de uno magistro & 5. capellanis super pradict' peciam terr' vocat' le Savoy fundare, & Hospitale cum sic fundat' fucrit, should be incorporated by the Name Magistr' & Capella-

(a) Moor 228. 1 Leon. 159. 1 Anderf. 202. Hob. 125. Postea 123. b. Br. Corporation 10. (c) 9 E.4.19. b. Br. Corporati-

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norum Hospital' H. super Regis Anglie 7 de Savoy; and yet in Truth it was not an Hospital in the Time of H. 7. but in Intention only; and yet the Kin his Charter called it the Hosp. of K. H. 7. And it was admitted to be a good Name of Incorporat, by all those who argued the Case betwixt (a) Mariat & Pascal upon the Incorpor. of the faid Hosp. Trin. 30 El. in the Exch. where the Cafe was adjudged; or in the Exch. Chamb, where it depended by Writ of Error. And therefore in (b) 44 E, 3. 16. b. Regist. 23. there the Corporat. was Prior Hosp's. Johan' Ferufal. in Anglia: And fo (c) 9 E. 4.6. Hospitale S. Lazari de (d) Jerusal in Anglia: Which sufficeth for the Name of the Corporation altho' it be but a Fiction, f. that either St. John which was S. John the Evangl.) or Jerusalem was situate in (d) 1 Rol. 512. Engl. So Magistri milit' Templi Jerusal' in Anglia; and in the Register, Prior & frai sancte Marie de monte Carmeli in Anglia: So I have seen a Record, That Katharine the first Wife of K. H. 8. had a Licence to found a Chauntry by the Name of the Chauntry de monte Calvarie extra Algate Lond. And it is great Reasonthat an Hosp. &c. in Expectancy or Intendment, or Nomination, should be sufficient to support the Name of an Incorporat. when the Corporat. it felf is only in abstracto, and rests only in Intendment and Consideration of the Law; for a Corporat. aggregate of many is invisible, immortal, and rests only in Intendment and Confideration of the Law; and therefore in 39 H. 6. 13. b. 14. a Dean and Chapter can't have Predecessor nor Successor. 21 E. 4. 27. a. & 30 E. 3. 15. b. They can't commit Treason, nor be (e) outlawed, nor excommunicate, for they have no Souls, neither can they appear in Person, but by Attorney. 33 H.S. Br. Fealty. (f) A Corporat. aggregate of many can't do Fealty, for an invisible Body can neither be in Person, nor swear. Plo. Com. 213. and the L. Barkley's Case 245. it is not subject to Imbecillities or Death of the natural Body, and divers other Cases. A Thing which is not in effe but in apparent expectancy is regarded in Law; as a Bishop (g) 2 Rol.Rep. who is elect before he be consecrated; an (g) Infant in his Mother's Womb before his Birth, &c. 5 E.2. Bre. 86. 8 E.2. Voucher 237. 38 E. 3.30. 41 E. 3. 5. 11 E. 3. Qua. Imp. 158. So for the Name of a Corporat. it is fufficient to name a Place in Eng. by the Name of Ferusal. Mount Calvary, Mount Carmel, Bethelem, &c. afortiori, the name of a spacious and goodly House well and actually built by the name of an Hosp. is sufficient; for that imports Truth and Certainty. By which it appears, that in the Case at Bar there was a lawful Corporat. of the Governors, &c. created and instituted by the K.'s Charter, and by Conseq. as well any Person in Engl. as Sutton, might give and grant to em before any Foundat. laid, or to be laid by Sutton (as it was imagined he ought to have done before they were capable, &c.) but that is clearly answered and confuted before; and in Truth hac recitaffe est confutaffe.

(e) Br. Corpo-Br. Utlagary 72 39 E. 3. 13. a. (f) Br. Fealty 7 Co. to. b. Co. Lit. 66. b. 4 Co. 11. 2.

254. Co. Lit. 390.a. 7 Co. 9. a. Car. 87. Hob. 222, 338. 31 E. I. Brief 873. 11 E. 3. Voucher 13. 9 H.6. 24. 2. 2 Rol. 746.

two manner of Foundations, one fundatio incipiens, the other fundatio perficiens, and therefore quatern ad capacitatem & habilitatem, the Incorporat. is metaphorice call'd the Foundat. for that is the Beginning, as a Founda. quasi fundamentum capacitatis, preceding the whole, and therefore in (a) 21 H. 6.4. (a) Br. Corpoa. a Writ was brought against J. Arden, Abb. of St. Jo. Bapt. of Pation 30.
Br. Misnomer Colch. the Def. pleaded, that before Time of Memory Founda. was made of the fame Place per nomen Abbat. Eccl. & Monast. Fitz. Brief 88. de S. Jo. de Colch. &c. where Poundat. is taken for Incorporat. 38 E. 3. 14. 38 E. 3. 28. a. 20 H. 6. 27. a. & (b) 18 H. 6. 16. a. (b) Fitz. Brief in the Dean and Canons of Windfor's Case, and divers other 75. Books agree with the same, Sed quatenus ad dotationem, the first Gift of the Revenues is called the Foundat, and he who gives it is the Founder in Law, for proprie, fundatio est quasi fundi datio, and the first gift is fundamentum dotationis seu collationis, & appellatione fundi ædificium & ager continentur; and that is prov'd by the Stat. of (c) West. z. c. 41. Si Abbates, (c) 2 Inst. 457. Priores, Custodes Hospital' & aliarum domorum religiosarum fundatarum ab ipso regevel a progenitoribus suis alienaver vel de cetero tenem domibus ipsis ab ipso vel aprogenitoribus suis collata, &c. In which was observed, that in respect of Tenements collated or given by the K. the House was said to be founded by the K. but more fully in the Clause following in the said AA, Si autem domus illa a comite, barone, vel ab aliis fundata fuerit, babedt ille a quo, &c. tenement' fic alienat' collat' fuer' br'e ad recuper and', &c. where the Collation or Gift of the Tenements is called the Foundation. And where the Founder brings the faid Writ of contra formam collationis, the Writ of Prac qd' reddat mesuag' qd eid' domui collat' fuer .Vide 9 H.7 26. F. N. B. 211. Vet' N. B. 142. 38 Ass. p. 22. He who gives the first Lands is the (d) Founder, quia fundare in that Sense (d) Br. Presentmibil al' est quam fundum dare, and therewith agrees 14 E. 3. ment al'Esglise Corrodie 5. In aWrit of Prohibition, where a common Person is 2 Inst. 458. Founder of an Hospital the Writas appears in the Regist' 41. a. 1 Rol. 514. faith, Hospitale Sancti Egidii leprosorum de Burton per antecessor' R. filit I. adsustentation' leprosorum & aliorum pauper' & infirmor' ibid' totum in temporal' & nihil in (piritual' fundat' existit, and ibid' 43. a. the like Writ where the King is Founder, cum Hospitale nostr' sanctor' innocentium juxta Lin. coln' de fundatione progenitor' nostror' Regum Angliæ, &c. de terris & possessionibus pro sustentatione pauper & infirmor in

Asto the 7. Object. it is to be known that in Law there are Anf. to 7. Obj. " Antea 23. b.

eod' Hospital' degentium dotatum existat : In which it was obferv d, that where the first Writ saith fundat this Writ calleth it dotat' 39 E. 3. 17. b. The Abbot of Lyra brought a fci' fac' against the Dean of Woborn, where the Dean said he held of the Patronage (i. e. of the K.'s Foundat.) and prayed Aid of him, and had Aid; and there came a Writ of Procedendo,

The Case of Sutton's Hospital. PART X.

(*) 33 E 3. And de Roy. 103.

(') Corody 6. (c) Fitz. Aid de

Firz. Br. 573.

(d) 1 Rol. 514. Br. Presenim. 2 Inft. 458.

(e) Antea 28.a. 30. a. 1 Rol. 133.

(f) I Rol. 512.

(g) 1 Rol. 512. 1 Anderf. 210. Br. Corporation 15. Br. Prescription 12. (b) Co. Lit. 2 Bulft. 304. 1 Bulft. 349. Godb. 387. Latch. 29. Br. Pater:

and not of the Collation, and it was taken all one, (a) 23 E. 3. Aid 103. the Dean of Stafford's Case, the Deanery is laid to be of the Foundation, & paulo post of the Collation of the K. 8 E. 3: 56. in Sirach's Case, by the Foundation the Land is amortised. Vide 4 F. 3. All. 177. 21. E. 3. 60. a. (b) 24 E. 3. 33. b. 34. a. 44 E. 3. 23. (c) 44 E. 3. 11. b. 2 E. 3. 28. the E. of Richmond's Cafe, 6 H. 4, 5. 7 E.4. 12. And there-Br. Aid de Roy fore it was resolved, That if the K. had incorporated the Poor of the faid Hospital, Sutton need not have made any Instrument comprehending any Foundation, Erection, &c. but his gift of the Land being the first Gift had made him (d) Founder, and the very first Donation is all the Foundation which is requisite in Law; and to the Erection of an Hospital, &c. there is not in Law any Thing requisite, but Incorporation and Donation. And in the Report I have omitted all the Arguments which were made at large on both Sides upon one common Ground, where one Act at one Instant shall enure to divers Intents distinct in Time, some holding, That the Bargain and Sale amounts not only to a Dotation, but also to a Foundation, and others totis viribus econtra; for it appears to you now without Question, that the first Dotation is the Foundation. And yet in that also a Difference is necessary to be well understood s. when the K. expresses the Words, designs the Place, appoints the Number, and gives them a Name by his Charter, so that it is a complete Corporation; there the Founder or Donor hath nothing to do but to make the Dotation without any Instrument comprehending these Words, (e) fundo, erigo stabilio, &c. or other the like Words; for the common Person who is the Founder in such Case has nothing to do in the Work of Incorporation, but when the (f) K. by his Charter referves as well the Nomination of the Persons as the Name of the Incorporation to a common Person who shall be the Founder, there he ought to name the Parties, and declare by what Name they shall be incorporated, and there many Times, although it be fuperfluous, he uses these Words, fundo, erigo, &c. or fuch like, and when the common Perfon hath done it and declared it in Writing according to his Authority, then they are incorporated by the King's Letters Patent, and not by the common Person, for he is but an Instrument, and the King makes the Corporation in such Case in the same Manner as if all had been comprehended in the Letters Patent themselves: For it is true, (i) Firz. Grant that none (g) but the King alone can create or make a Corporation as it is held in 40 E. 2. 4. 4. 40. All. 8. but (h) qui poration, as it is held in 49 E. 3. 4. a. 49. Aff. 8. but (b) qui

> per alium facit per seipsum facere videtur. Vide for this Difforence 38 E. 3. 14. b. 22 E. 4. Grant 30. i) 2 H. 7 13. a. b.

of Tit. Grant 36. 20 H. 7. 7. And as to the eighth Ob- Answ. to 8. jection against the Nomination of the Master, it was resol- Antea 24. 2. ved that it was good; for Sutton had Liberty at his Will and Pleasure to nominate him, and when he is nominated, he is Master by Force of the said Letters Patent, and now as if he had been named in and by the Letters Patent themselves at first, and the other Part of the Objection is answered before.

And as to the Objections against the Bargain and Sale, it Objection. was first resolved without Question, That Money given by Ant. 24. a. the Governors or any of 'em as private Persons, is a good (a) (a) 2 Rol. 787, Confideration to grant the Land to them in their Politick 2 Inst. 725. Capacity, but the Indenture imports that they paid it as Governors, and by fuch Name they are acquitted by the Indenture. Also there is (b) twelve Pence Rent reserved to (b) Ant. 18. a. Sutton and his Heirs, which is a good Confideration. 2. Al- 26. a though in the Habendum a Trust is declared, that without 2Rol.Red.104: Question can't make the Bargain and Sale void, but the 1Mod.Rep 263, Conveyance being by Bargain and Sale, was wifely made 264. to declare the Confidence and Truft. And as to the third, that is clearly answered and resolved before.

And as to the last Objection, fc. That in pleading, these Answ. to to Governors can't plead, that they were seised in jure Ho- Antea 24. 25 Spitalis, because there was not any Hospital incorporate, nor in effe, at the Time of the Incorporation. To that it was answered and resolved, That the Pleading should be that they were seised in their Demesne as of Fee (c) in jure (c) Doctrin. incorporationis sue, and so was it pleaded in the said Case placit.82. of the Cooks of London in Plow. Com. Vide Fulmerstone's Case also in Plow. Com. 102. Vide (d) 7 E. 3. the Case of (d) 7 E.3.31.4. Custos altaris, he counted that he was seised, &c. in jure altaris. And as to the Precedents which were shewed, it was answered, That there are many Clauses inserted in Charters as well of the King as others, ex confuetudine Clericorum, which are not de necessitate legis, but some declaratory and explanatory, and some prolix and nugatory, but lew multa prosicientia, & persicientia paucis comprehendit. And all the Judges who argued in this Cafe (except the two aforesaid) concluded against the Plaintiff, and those two mutata opinione affented also to the Judga ment; fo that by the Affent of all the faid Judges (e) nul- (e) Antea 24.b. to contradicente Judgment was given against the Plaintiff. And the Lord Ellesmere Lord Chancellor of England Hearing all the Arguments at the Bar and Bench agreed also in Opinion with the Judges: And so this great Work of Charity has taited of such Charity which ought to be in Judges, which is declared in

The Case of Sutton's Hospital. PART X.

(a) W. 1.051. 2 laft. 264. Co. Lit. 195. 2. 11 Co. 76. b.

the Stat. of (a) West. r. cap. ult. Summa charitas est facere Justitiam omnibus personis omni tempore quando necesse fuerit. And there is a good Rule for these Governors, and all fuch Corporations, which is expressed in the Statute de Templariis Anno 17 E. 2. in these Words, Ita femper quod pia & celeberrima voluntas donatorum in omnibus: teneatur & expleatur & perpetus sanclissime perseveret. And Sir Thomas Fleming, Knight, after the first Day this Cafe was argued fell fick, of which Sickness he afterwards died, so that he never argued this Case. This Sir Thomas Fleming was first a Serjeant at Law, and afterwards Solicitor General to Queen Elizabeth, and to the King that now is for the Space of twelve Years, and then was preferred to be Chief Baron of the Exchequer after the Death of Sir William Periam, and afterwards advanced to be Chief Justice of England after the Death of Sir John Popham; all which Places he discharged with great Judgment, Integriry and Discretion, and he well deserved the good Will of all that knew him, because he was of a sociable and e placable Nature and Disposition.

The Reason of reporting

Which Cafe I have reported the more at large for three Reasons. 1. For the Confirmation of Incorporations founded for Works of Piety and Charity in Time past. 2. For the better Instruction how they which shall be founded. hereafter shall be so established that no Exception may be taken to them. 3. For the refolving of certain Opinions and Questions which were moved at the Bar, and which might have disturbed the Peace of the Law. In the Argument of this Case many other Authorities were cited fc. 2 E. 3.47. 3 E. 3.83. 5 E. 3.144. 7 E. 3.57. 8 E. 3.5. 8.E. 3.67. 8 E. 3.208. 18 E. 3. 1. 20 E. 3. Nonabilitie 9. 20 E. 3. Corone 225. 21 E. 3. 39. 32 E. 3. Aid 55. 40 E. 3. 28. 44 Aff. 2. 13 R. 2. Breve 643. 11 H. 4. 12, 19. 14 H. 4. 8. 3 H. 6. 28. 7 H. 6. 13. 9 H. 6. 13, 14, 16. 20 H. 6. 7. 21 H. 6. 2. 12 E. 4. 17. 15 E. 4. 1. 21 E. 4. 32, 55, 57. Lib. Int. 112. 6 H. 7. 14. 10 H. 7. 16. 11 H. 7. 9: 11 H. 7. 27. 13 H. 8. 13. 14 H. 8. 29. 32 H. 8. Br. Corp. 78. 1. Mar. Dy. 98. 7 El. Dyer (b) 8x. the Case of the College of Grainstock, 10 El. Dyer the Case of the College of Landebrevy, Pl. Com. Grendon's Case 494. Hill. 16 El. rot. 495. Rol. Rep. 418. Sir Fr. Fleming's Cafe in Communi Banco.

(6) Dyer 81. pl. 64. Lit. Rep. 108. 4 Co. 107. b.

The Names of the Governors nominated by Sutton and expressed in the faid Charter, were the most Reverend Pather in God, George Archbishop of Canterbury, Thomas Lord Ellesmere, Lord Chancellor of England, Robert Earl of Salisbury, John Bishop of London, Launcelor Bishop of Ely, Sir Ed. Coke, Kt. then Ch. Just. of the Court of Com. Pleas, and now Lord Chief Justice of England, Sir Tho-

mas Foster one of the Justices of the Court of Common Pleas, Sir Henry Hobart then the King's Attorney General, and now Chief Justice of the Court of Common Pleas, John Overal Dean of the Church of St. Paul in London. George Mountaine Dean of Westminster, Henry Thursby one of the Masters of the Chancery, Jeffery Nightingale, Richard Sutton, John Law, Thomas Brown, and the Mafter of the said Hospital for the Time Being; and after the Death of the faid Sir Thomas Foster, one of the Justices of the Court of Common Pleas, (who was a Grave and Reverend Judge, and of great Judgment, Constancy and Integrity) Sir James Altham, Knight, one of the Barons of the Exchequer, was according to the faid Charter unanimi consensu chose in his Place. And the said Master of the Hospital whom Sutton had nominated durante beneplacito, our Lord the King, after the Death of Sutton, by his Letters Patent hath nominated for the Term of his Life. Franklink eligi tölep a en el

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Mary Portington's Cafe.

2 Brownl. 65.

(a) Dodrin.

Mary Portington brought an Action of Trespass against Robert Rogers and Tho. Barley, quare Clausum & domum fregit apud Thorp Salvyn in the County of York, 20 Junii, 7 Jac. Regis. And the (a) new Assignment was of a House and a Crost containing one Acre in occupatione Tho. Barley, &c. The Defendants pleaded in Bar, That Herceus Sanford, Esq; was seised of the Tenements, &c. in Fee, and held them of the King, as of the Honour of Tickil in Socage; and 8 Maii 24 Eliz. made his Will in Writing, and thereby devised them to Elizabeth Sanford his youngest Daughter, when she should accomplish her Age of eighteen Years, and to the Heirs of her Body, 20 Julii, 24 El. the said Herceus Sanford died, the said Elizabeth then of the Age of five Years; and afterwards 20 Junii, 37 El. she accomplished her Age of eighteen Years; and 25 Marcii, 38 El. entred into the Tenements, &c. and was thereof seised in Tail, &c. and so seised took to Husband the faid Robert Rogers 1 Nov. 39 El. and justified, &c. The Plaintiff replied, and faid, That the faid Herceus had Issue Mary his eldest Daughter, Helen his second Daughter, and the said Elizabeth his youngest Daughter, and confessed the devise of the said Tenements to Elizabeth; but farther faid, That by the fame Will, for want of Issue of the faid Elizabeth the Remainder of the faid Tenements was limited to the faid Mary now Plaintiff in Tail, the Remainder to Helen in Tail, the Remainder to his 4th, 5th and 6th Daughters in Tail, the Remainder to his Neph. J. Roades, and to his Heirs Males, with divers Remainders over in Tail. Provided always, That if my faid Daughters or any

of them, or any other the Person or Persons before named, " to whom any Estate of Inheritance in Possession or Remain-" der, of in, or to the said Lands, Tenements and Heredita-"ments, with their Appurtenances or any of them, or any " Part or Parcel of emor any of emislimited, devisedor ap-" pointed by this my last Will and Testament, or the Heirs be-" fore mention'd of em or any of em, shall jointly or severally, by themselves or together with any other Person or Persons, wil-" lingly, apparently and advisedly conclude and agree to, or for " the Doing or Execution of any Act or Devise, whereby or " wherewith the said Premi ses so to ementail das is aforesaid, " or any Part or Parcel thereof, or any Estate or Remainder " thereof, or of any Part thereof before limited or appointed to " any Person or Persons by this my last Will and Testament " (hall or may by any Way or Means be discontinued, aliened, of put away from such Person or Persons and their Heirs, or any of em, contrary to my Intent and Meaning in and by this my last Will and Testament, otherwise than for the only foin-" ture or Dower of any the Wife or Wives of any the Per-" son or Persons before named, for the only Life or " Lives of fuch Wife or Wives; or Shall willingly and " advisedly commit or do any Act or Thing, whereby the " said Manors, Lands, Tenements and Hereditaments, or any Part thereof shall not or may not descend, remain or come " to such Persons, and in such sort and order as I have before li-" mited and declared by this my last Willand Testament, other-" wife than as before is said; then I will, limit, and declare and " appoint hereby, that then my said Daughter or Daughters, or other the Person or Persons before named and every of 'em, " so concluding and agreeing to or for the Doing or Execution of any such Act or Devise as is aforesaid, shall immediately from and after such concluding and agreeing, lose and for-" feit, and be utterly barred and excluded of and from all and every such Estate, Remainder and Benefit as she or they, or a-" ny of em should, might, or ought justly to have, claim, challenge and demand, of, in, or to so much thereof as such Conclusion or Agreement Shall extend unto or concern, in fuch Manner and " Form, as if the or they or any of them, had never been nam'd or " mentioned in this my last Will and Testament, for or concern-" ing the same: And that then and from thenceforth the " Estate and Estates limited and given to ber or them so " concluding and agreeing as is aforesaid, shall from and " after such Conclusion and Agreement forthwith utter-" ly cease, and be determined in, for, and touching so "much thereof as such Conclusion or Agreement shall con-"cern and extend unto, as fully to all Intents, and Pur-" poses, as if she or they so concluding or agreeing, as is afone

" aforefaid, were dead without Heirs of their Bodies lawfull begotten, as is aforesaid. And then I will, and further de-" clare and devise, That presently after such Conclusion and A-" greement, such Ferson and Persons to whom the Estate and "Remainder doth first and next belong and appertain unto, " after fuch of the said Persons baving then the actual Posses-" fion thereof, which shall so conclude and agree as afore is said, " by Force of this my last Will and Test. shall and may enter " into bave and enjoy so much of the faid Lands, Tenements, " and Hereditaments, with their Appurtenances, as such Con-" clusion and Agreement shall concern and extend unto, of " and for such Estates, and with such Remainders over, and " with such, and in such and the same Manner, Condition and "Degree, and with such and the like Conditions and Limia tations before knit and annexed unto the same by this my " last Will and Testament, in such Manner to all Intents and "Purposes, as if my said Daughters, or other the said Per-" fons so concluding and agreeing, were naturally dead with-" out fuch Heirs of their Bodies lawfully begotten as is before anamed, and as the the said Estate or Remainder were wested in him or them for want of such Heirs as is afore-" said, any Act, Thing or Matter before-mentioned and de-" clared in and by this my last Will and Testament to the con-" trary in any wife notwithstanding": And the said Herceus fo feifed of the Tenements aforesaid, died thereof seifed, the faid Elizabeth then being within the Age of 18 Years, who accomplished her Age of 18 Years 20 Julii 37 El. and entred into the Tenements, and was feifed thereof in Tail, the Remainder over to the faid Mary, &c. and afterwards took to Husband the faid R. Rogers; and afterwards 13 Apr. 7 Jac. Reg. by Deed indented the faid Robert and Elizabeth votuntarie, evidenter, & considerate, Anglice, willingly, apparently, and advisedly concluserunt & agreaverunt with Chr. Bradhaw and Gerv. Rogers, to suffer a Common Recovery of the faid Tenements upon a Writ of Entry in le Post, &c. ad intentionem ad evacuand & auferend, Anglice to make void and put away ab eadem Maria præd Remanere Tenementorum pradictorum, according to which Conclusion and Agreement, the faid Writ of Entry in le Post was brought against the said Robert and Elizabeth of the Tenements a-foresaid, they being then Tenants of the Freehold of the Premisses; and thereupon a Common Recovery was had against them, with Voucher over, and Judgment given, and Execution had against the said Robert and Elizabeth; which Recovery was to the Use of the faid Robert and Elizabeth, and their Heirs; and the faid Pl. faid, That by Reason of the faid Conclusion and Agreem. ad permittendam pradict Communem

mupem recuperationem in forma predicta predict' Robertus (a) Plowd.2.b. Elia. totum statum suum, Se. de S in tenementis prad Case 3.a. ib. forisfecerunt, & idem status suus de & in tenementis illis 6 Co. 40. 2.

cum pertinen penitus determinavit, & vacuus devenit: Præf. 2d 4 Rep.

Wherefore the Pl. entered for the said Forseiture as in her 2 Co. 46. b. Rem'r, &c. upon which the Def. demurr'd in Law. And 3 Co. 8. a. this Plea was entered Mich. 7 Jac. Regis in C. B. and had 7 Co. 21. 2. depended 14 Terms, and had been argued at the Bar 8Co. 35.b.72.b. more than half fourteen Times; and now this Term it was 9 Co. 105. a. argued by the Judges, and at last it was unanimously resol- 12 Co. 81.

ved by the whole Court, That Judgment should be given a- 1 Rol. Rep. 48. gainst the Pl. of which I will make the shorter Report, be- 2 Rol. Rep. 197. cause I have published many Cases in my Reports before to 1 Leon. 83,8cc. Hob. 293. the same Effect: In this I will add some Authorities and 2 Inst. 332. Reasons, confirming the Rule of this Case, and affirming the Cr. Car. 42.
Resolutions before, and refer the Reader without Repeti-Raft. Tail 1. tion to the Authorities and Reasons reported by me before. f. 440. b. On the Plaintiff's Part divers Objections or rather Declama- Lit. Sect. 13, tions were made. J. That from the Time of the Making 362, 441. af-the Act of 19 E. 1. de (a) Donis conditionalib, till (b) 12 (b) Co.Lit.361. E. 4. Taltarum's Case, there was no Opinion, That a Re- 1 Co. 131. b. covery against Tenant in Tail with Voucher over, would bind 6 Co. 40. b. Post. & 38. 2. the Estate-tall upon the Pretence of a seigned Recompence Godb. 308. but in 12 E.4. it was newly invented, and never before that Time, Hard. 209. imagined by any of the Sages of the Law, in fo many (6) 34 & 35 H.8. Generations and Ages incurred after the faid Act. J 2. Al- 2 Co. 15. b. tho' the Donor can't restrain the common Recovery after it 6 Co. 55. 2. is suffered and executed, (because then the Reversion or Moor 195. is suffered and executed, (because then the Reversion or Cro. Car. 430. Remainder is barred, So.) yet (as it was agreed on the o- Co. Lit. 335.2. ther Side) he may reftrain the Conclusion and Agreement Plow. 555.2. to suffer it, and so prevent the Bar by the Recovery, and 2 Rol. Rep. 417. preserve his Remainder or Reversion. 5 3. Such Reco. (d) 1 Leon. 261. veries are by divers Acts of Parliament mark'd and brand. 2 Leon. 168. ed with the Blemish of Fiction and Falsity; as in the Stat. 3 Leon. 78. of (c) 34 H. 8. cap. 20. they are styled feigned and untrue Godb. 6. Recoveries; and so in the Statutes of (d) 11 H. 7. cap. 20. 2 Anders. 31. (e) 32 H. 8. cap. 31. (f) 14 Eliz. cap. 8. Sc. they are called 1 Rol. 878. (e) Postez 44. 2. covenous, and had by Collusion, and therefore it stands with Cro. El. 162. Law and Reason to provide for the Preservation of Revins 1 And. 38,275. and Remainders against such seigned false and covenous Co.Lit.362.a. Recoveries. J 4. That this Opinion, that a common Re- (f) Cro.El.362. covery can't be restrained by Condit. or Limitation was new, Co. Ent. 655. and of late Invention, and never heard of before Sir An- 3 Co. 60. b. thony (2) Mildmay's Case, in the 6th Part of my Reports, Moor 690. f.40.a. For it was admirred to be restrained in the Case of the i And 275. Earl of (b) Arund, Dy. 17 El. 342,343. Where the faid Earl in Co. Lit 356. the Time of Q. Mary gave the Manor of Hafelber Bryan in pl. 55. the County of Dorfet, by Indenture to Thomas late Earl Postes 40. 2.

of 3 Co. 34. 2.

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of Northumb, and to the Heirs Males of his Body; upon Condition, qu' si pred' Comes aut bered' masculi de corpore suo exeuntes, inter al', aliqu' recuperare versus eos permitterent, vel discontinuarent: And in the Argument of Scholastica's Case, Pasch. 12 El. Pl. Com. 403. the said Point of Restraint of a common Recovery was never moved; and therefore it was thought to stand with the Honour and Gravity of the Court, that this Point had been so often argued at the Bar; and therefore now the Serjeants faid, that it was ripe for Judgm. after such a mature Deliberation. And in this Case all the faid Object. were confuted, and thereby the Point in Judgment confirmed. I As to the first, 2 Questions were moved and resolved, the first, that Judgment given against (s) 2 Rol. 396. (a) Ten't in Tail with Voucher and Recompence in Value, would bind the Estate-tail, notwithstanding the said Act of 13 E. 1. Be the Recovery upon good Title or not. 2. That the Judgm. given in fuch Caseforthe Tenant in Tail to have in Value, would bind the Estate-tail, altho' no Recompence be had. And therefore as to the first of these Questions, it appears by our Books, that the Opinion, That a Recovery against Tenant in Tail with Voucher would bar an Estatetail, and was not restrained by the Stat. de Donis conditional' was not newly invented in (b) 12 E. 4. but oftentimes affirmed for Law by the most knowing of the Law that ever were; for Sir William Thirning in the Time of H. 4. Ch. Justice of the Com. Pleas, anno (c) 12 H. 4. 13. b. faith, That the most learned of the Law that ever were, (and

(6) 1Co.131. b. 6 Co. 40. b. Co.Lit. 361.b. 372.b. Godb. 308. 1 Bulttr. 159, 160. Hard. 209. 12E.4.19,20,21. (c) Co. Lit. 304. b.

(d) 1Co.94.b. 96 b. Dr. & Stud. 49 a. Co.Lit. 343.b. Plow. 436. b. 466. a Plo. Manxel's Case 14. b. 15. a. 1 Rol. 842. Br. Charge 4. Br. Tail 6. 2 Brownl. 67. 2 Bulttr. 43. Hard.209,384. Raym, 349. 3 Keb. 287. Br. Voucher111 Br. N. C. 70. Value 33. (f) Co. Lit.

when there was the best Law that ever was) were in the Reign of K. E. 3. which also were near the Making of the Stat. Let us see then how the Law was held in diebus illis in this Point. 15 E.3. Brief 324. By Recovery in Value by Tenant in Tail, the Estate-tail is barred, and he shall have a Formedon of the Land forecovered in Value. And therewith agrees 42 E. 3.53. for there it is held, That in some Case a Man shall have a Writ of Formedon of Land which was never given; as if Tenements in Tail be loft, and the Tenant in Tail recovers other Land in Value, the Issue shall have a Formedon of the Land recovered in Value, and yet that Land was not given. 44 E.3.21,22. Octavian (d) Lumbard's Case, Ten't in Tail grants a Rent-charge to one, in Confideration that the Grantee having Right to the Land in Tail, releases to him, it shall bind the Issue in Tail. 48 E.3.11.b. in Jeffery Bencher's Case, a Recovery in Value by Tenant in Tail (e) Poster 43.b. shall bind the Tail, and a Formedon lies of the Land recovered in Value; and therewith agree 1 E. 4. 5. Br. Recovery in (e) 5 E. 4. 2. b. And that also appears by the like Cases: For if Tenant (f) in Tail aliens with Warranty, and leaves Affets to descend, it is a Bar to the Issue by Reason of the Warranty and Assets descended;

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but neither the Warranty without the Affets, nor the Warranty and Affets without Judgm. in a Formedon, shall bar the Estate-tail; for if the Issue (without Judgm. given) aliens (a) Co. Lit. the Affets, his Issue shall recover the Land in Tail; but after Judgm. given that he shall be barred in Formedon, the Iffues in Tail shall also be barred; and therewith agree Temp. E. I. Tit. Garr. 89, 34 E. 1. Tit. garr' 88. 11 E. garr'83. 4E.3.24 Hen. Sommers's Cafe, 3 E.4.14. 40E.3.9. 14H.4.39. a. 24H.8. Br. Tail 33. 4Mar. (b) Dyer 139. And in the Case (b) Dyer 139. of a common Recovery there is a Judgm. against the Ten't 66. Vet. N.B. in Tail, and another Judgment against the Vouchee to have 144. a. in Value, and therefore these Resolutions and Opinions of Law produced the Judgm. in 12 E. 4. which was not of any new Invention, but proved and approved by the Resolution of the Sages of the Law at all Times after the faid Act, until 12 E.4. And the Judges of the Law then perceiving what (c) Contentions and Mischiefs had crept into the Quiet of (c) Co Lit. 19.b. the Law by these settered Inheritances; upon Consideration of the faid Act, and of former Expositions thereof by the Sages of the Law at all Times after the faid Act, gave Judgm. That in such Case the Estate-tail should be barred. As to the 2d Question in the 1st Objection, it is worthy Confideration, That the Judgment given for Tenant in Tail to have in Value, is a Bar to the Estate-tail, altho' no Recompence. be rendeted in Value; and that appears in 23 Eliz. Dyer 376. (d) Tenant in Tail suffers a common Recovery with (d) Dyer 376. common Voucher, and dies before Execution had against pl,26. 1Co.94.3 Tenant in Tail, and the Issue in Tail enters, the Recoverer 106. a. may enter upon him by Reason of the Recovery in Value; 2 Rol. 396. and therewith agrees Shelley's Case, in the first Part of my Plow. 55. b. Reports, f. 106. And in the Marquis of Winchester's Case, 3 Keb. 699. lib. 3. fol, 3. a. If (e) Tenant in Tail suffers a common Recovery (altho' erroneously) and afterwards disseifes the Recoveror and dies, his Issue shall not be remitted, for the Estate-tail was bound by the (f) Judgment to have over in (f) 7Co.39.2. Value, although in Truth no Recompence can be had. And in Manxel's Case, Pl. Com. f. ult. (g). If there be Ten't in Tail, and a Stranger brings a feigned Pracipe quod reddat el's Case 14. b. against him, and he wouches to Warranty, and the Demandant by Default of the Vouchee, or by his Confession recovers against Tenant in Tail, and he over in Value against the Vouchee, and before Execution the Tenant in Tail dies, and the Land (b) descends to his Issue, yet the Deman- (b) Lit. Sect. ant may enter, or sue Execution against the Issue, and the 690. flue shall never falfify the Recovery there, because he has, or may have Affets, for if he ought to falfify the Recovery, then he ought to retain the Land in Tail, and have Exeution of the Assets also, &c. And so as it is there reported,

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was it taken by the Ld. Mountague, and other Justices in the Star-chamber, in a Matter there in the Time of E. 6. So that where the Act of W. 2. faith, quad finis ipfo jure fit mullus, we may say, qd' quoad communem Recuperation', So. actus ipse ipso jure sit nullus. J. As to the 2d Objection it is abfurd to fay, that the Recovery it felf can't be prohibited by any Condition or Limitation; and yet that the Conclusion and Agreement to fuffer a Recovery, shall be prohibited; and such Condition to prohibit a Conclusion or Agreement favours of a new Device or Invention: For till now of late, none ever heard of any Condition or Limitat. to prohibit (a) Goings about, or any Conclusion or Agreement, but they are altogether unknown to the Law. And therefore the faid Act of W. 2, reciving the Mischief faith, Per factum tamen & fooffamentum eorum quibus tenementum fuit datum sub conditione exclusi fuerunt, &c. So that the Makers of the faid Act ought to be taxed with great Ignorance, and that the faid Act was not necessary, if the Going about or Conclusion to alien, might have been prohibited: For then when a Man had made a Gift to one and the Heirs of his Body, he might have added a Condition, That if the Donce in Tail at the Com. Law post prolem suscitatam had gone about or concluded to alien, that then the Donor should re-enter, and so have preserved his Possib. of Reverter, and so against that Provision might have been made by fuch preventing Condition; and therefore there was no Necessity that the said Act de Donis (b) Co.Lit. 19.2. conditionalibus should be made; and yet Sir Will. Herle (b) Chief Justice of the Common Pleas, in 9 E. 3. 22. b. faith, That they were wife People who made that Statute; and that Sir William Herle himself was at the Making of the faid Stat. appears in 41 E. 3. garr' 16. and in 5 E. 3. 14. a. the same Chief Justice saith, we saw those who made the Statute, and further faith, that K. (c) E. 1. (who by Affent of his Common Council in Parliament made the faid Act) was the wifest King that ever was, and the King and the whole Parliament prohibit factum & feoffamentum (for this Imagination of Going about or Concluding, was not then, nor long Time after hatch'd.) And fo in all fucceeding Ages, the Alienation it felf of Tenant in Tail hath been prohibited by Condition; as in 33 Aff. 24. temp. R. 2. Richel's Case, Lit.f. 163. (d) temp. H. 4. Thirning, 21 H. 6.33.b. (e) 10 H. 7.11.A. 20. 6Co.42.b. 13H. 7.23 a.b. 21 H. 7. 11. a.b. And it was well observed in this Case, That to an Estate-tail there are three Manner of (f) Incidents; some by the Common Law, others by Act of

Parliament, and some by Custom. By the Com. Law are such

as are not reffrained by the Stat, and can't be reffrained by

any Condit. as (g) Dower and Tenancy by the Courtefy after

(a) Cro. Jac.

697, 698.

(c) Co.Lit.19.2. 392. b.

(d) Co. Lit. 377.b Lir.Sect. (e) Br. Cond. (f) 6Co.41.2. Co. Lit.224.a. 2 Brown1. 67: (4) 1Rul.418. 2 Brownl. 67. 6 Co. 41. 2.

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fue,

Iffue, are incident to an Effate-tail, and can't be reftrained by Condit. Vide 22 E.3.17. Also the Estate of him, and of Ten't in Tail after Possibility, are dispunishable of (a) Waste, so a (a) Brownl.67. (b) collateral Warranty is a Bar to an Effate-tail, and a (c) com. i Rol. 418 Recovery also, and none of these can be restrained by any Con-Lit. Sect. 34 dit. or Limitation. By Stat. Law, as to make Leafes by the Co. Lit. 27. b. Stat. of (d) 32H.8.c.28. and to levy a Fine by the Stat. of 4H.2 Infl. 302. 7.6.24 and 32 H.S. 6.36 to bar Issues, and none of these which 9 Co. 139. 2. are Incidents to his Estate by Act of Parliament may be re- 11 Co. 80. a. ftrained by Condition: For when a Man makes a Gift in Tail, Dr. & Stud. he tacite gives these Incidents to it; and therefore to restrain Firz N.B. 59. b. them by Condition or Limitat. would be repugnant. For fup-Fitz- 1 E. pole that a Man makes a Gift in Tail, and further grants, that Walt. 125. he may make Leafes for Years or Lives according to the faid (b) 1 Rol. 418.

Act; or to levy a Fine with Proclamation, according to the Co.Lit.224.4. Acts in fuch Cate, to bar his lifues; Provided always, that he (c) 1Rol.418.a. Thall not make Leafes, or levy a Fine, none will deny; but 6 Co. 41. a. fuch Provide would be repugnant; and by Consequence in Hob. 170. the other Case, when such Incidents are tacitly implied; for Co. Lit. 223.b. (e) expressio eorum que tacite insunt nibil operatur: By Cu-224. a. stom, as to grant Lands by Copy, &c. at the Will of the Ld. (e) Hob. 170. according to the Custom of the Manor, &c. And the Opinion 1 Mod.Rep. 190 of Litt. as to the faid Case of a common Recovery, was cited Lit. Rep. 111. in his Chapter of Conditions (f) 84. After he had faid, that 1Rol. Rep. 310. Feoffee in Fee can't be restrained from Alienation; he 2Rol. Rep. 393. adds, Item, if Tenements be given in Tail upon Condition, Palm. 433 437. that Ten't in Tail nor his Heirs shall not alien in Fee nor in 5 Co. 11. a. Tail, nor for another's Life, but for their own Lives fuch 8Cos6.b.145.2. Condition is good, and the Caufe is (which is to be much ob- Co. Lit. 191.2. ferved) That when he makes such Alienation, he doth con- 205, a. trary to the Intent of the Donor; for which the Stat of W.z. 2 Inst. 365. C.t. was made, by which Estates in Tail are ordained; which 2 Sand. 351. is as much as to fay, as if he had faid contrary to the Intent Latch 25. of the Act of W. 2. or the Intent of the Donor within the (f) Sect. 162.

Purview of the faid Act and a (g) com Recovery is not I Rol. 418. Purview of the faid Act; and a (g) com. Recovery is not (g) Co. Lit. contrary to the faid Act, nor to the Intent of the Dohor 223. b. within the Purview thereof. But the Meaning of Litt. is, that Tenant in Tail may be restrained from Discontinuance either in Fee, or in Tail, or for another's Life, and fo he himfelf in the next Clause following explains himfelf, sc. and when he makes such Discontinuance he doth contrary to the Intent of the Donor. I And as to the third Objection and Alpersion of a Scandal upon common Recoveries (which is one of the main Pillars which supports the Estates and Inheritances of the Kingdom) it was anlwered, That there was never any Thing by the Wildom of Man fo well devised, or so surely-established upon Law and Reason, which the Wir and Craft

of those who are subtle and wicked, has not abused. And

sherefore it appears by the Preamble of the faid Ast of 34 H.8. That when the K. gave Lands in Tail to his loyal and faithful Servants and Subjects, intending not only to advance the Donees, but the Heirs in Blood of their Bodies, to the Intent that the Heirs of their Bodies should have in special Memory the Profit which they have by the Service of their Ancestors, and thereby they themselves the better encouraged to do the like Service to their Sovereign Ld. the K. It. was well done by the Parliament to tax the Donees in fuffering of false and feigned Recoveries to subvert the Intent of the K.'s Gift and Bounty by Difinheriting their Iffues, quia confirmat usum qui tollit abusum: And yet such was the Force of a common Recovery in such Case at the (a) Com. Law, before the faid Act of 34 H. 8. that the Estate-tail by a common Recovery was barred, although the Rev'n was in the King, and nothing could remedy it but an Act of Parliament. And therewith agrees 33 H. 8. Br. Tail 41. in Plo. Com. 555. And as to the Case on the Stat. of (b) 11 H. 7. It (b) 13 H.7.c.20. Com. 555. And as to the Care of the orat. of the Advancement of his Wife with a competent Jointure, and Preferment of the Heirs of their two Bodies begotten, has caused an Estate to be made to himself and his Wife in Tail, and after the Death of the Husband, the Wife to difinherit the Issues of the former Husband, fuffers a Recovery, and conveys the Lands to Strangers to the Husband's Blood, fuch Recovery was worthy by the Parliament to be noted with the Mark to be suffered by Covin; and the Act of the Wife either when she is sole, or of her and her second Husband, is so odious, that a Recovery had upon a good Title against them by Covin is void by the faid Act; and therefore it is not to be resembled to the Case at Bar; and yet there was no Remedy in fuch Case upon a common Recovery, till the said Act of Parliament was made. So in the faid Acts of (c) 32 H. 8. and 14El. when a common Recovery was had against Tenant for Life, to the Prejudice of those who had the Inheritance, it might well be called covinous, and by Collufion. And yet in the same Case, when Ten't for Life, the Remainder to A, in Tail, the Remainder to B. in Tail, &c. with divers Remainders over, and Tenant for Life suffers a common Recovery, in which he vouches A. and he the common Vouchee, it shall bind all the other Remainders, for no Covin or Collusion can be supposed, when (d) 3 Co. 60.b. the next in Remainder in Tail who has the immediate Inheritance is vouched; as it was adjudg-

ed in (d) Jennings's Case, Trinit. 38 Eliz. Rot. 2302.

Bar, I have reported next after this Case. And as

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(a) Co. Lit. 372. b.

Winch 43.

(t) 32H.8. C.31. 14 El. cap 8. Co Lit. 362. 2. 1 Co. 15, 16.

Roftea 43. b. Co. Lit. 362. a. Cr.El. 562,570 Co. En. 667. a. which Case having great Affinity with the Case at Moor 650. And. 275. Winch 43.

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to the faid Case of the Earl of (a) Arundel, Anno 17 Eliz. (a) Ant. 37. 20 First, nothing is spoken to that by any who argued in the Dyer 342, 343. Case, so that it is not any Authority for them who cite it. pl. 55, 56. Also in the same Case a Recovery is intended to be restrain- 6 Co. 41. a. ed, but not a Recovery with Voucher, &c. as in every com- Jenk. Cent. 242. mon Recovery there is. And in divers Acts of Parliament, common Recoveries have received Allowance and Advancement. And therefore the Statute of (b) 7 H. 8. cap. 4. recites, (b) Co. Lit. That divers, as well Nobles as others, have suffered com- 104. b. Dr. & mon Recoveries against them of divers of their Manors, Stud. f. 45. a. ways against them of divers of their Manors, Vaugh. 48. Ec. for Performance of their Wills, for Assurance of Join- Dyer 31.pl.213, tures to their Wives, &c. The same Act in Approbation of 141. pl. 46. common Recoveries, gives Remedies to such Recoveries in 19 H. 8. 12. 2. divers Cases. And St. Germyn in his 1st Book of the Dr. and Br. Melie 23 Student, cap. 26, approves common Recoveries to bind as well in Conscience as in Law. And by the Stat. of 23 El. cap. 4. it is enacted, That for Avoiding of the Danger to Affurances of Lands, and for Advancement of common Recoveries, That any common Recovery shall not be avoided for any Want of Form in Words, and not in the Matter of Substance. Note Reader, Semper in (c) fictione juris subst- (c) 11 Co.51.2. stit equitas, & contra negantem principia non est disputan- Co. Lit. 150. 2. dum. And in Truth none ought to be heard to dispute a- Palm. 354. gainst the legal Pillars of common Assurances of Lands and Inheritances of the Subjects. And at the Parliament held in the Reign of the late Queen Elizabeth, in the great Case betwixt T. Vernon and Sir Ed. Herbert (which was argued by learned Counsel before the Lords in Parliament) there Hoord an utter Barrister, of Counsel with Vernon (who was barr'd by a common Recovery) rashly, and with great ill Will inveigh'd against common Recoveries, not knowing the Reason and Foundation of them; who was with great Gravity, and some Sharpness, reproved by Sir James Dyer then Chief Justice of the Common Pleas, who said, He was not worthy to be of the Protession of the Law, who durst speak against common Recoveries, which were the Sinews of Affurances of Inheritances, and founded upon great Reafon and Authority, Sed non omnis capit boc verbum. And as to (d) Scholastica's Case, I respect much the Reporter, and (d) Pl. Com. attribute due Honour and Reverence to the Judges who argu- 403. a. ed in the said Case: But amicus Plato, amicus Socrates, sed 1 Rol. 472. magis amica veritas; for the Resolution in the said Case, 473, 474. is sounded upon two Authorities in Law; one in (e) 29 Ass. Br. Devise 16. Br. Condit. 111. Post. 40, 41. a. thorities being duly confidered, do not warrant the Dyer 127.pl. 56. Collection or Conclusion which is made upon them (f) Plowd. were the start that

(argu- 413. b. 414. c

arguendo in the faid Cafe) but to fay the Truth the contrary. For as to the faid Cafe of 29 Aff. P.17 it is there cited in this Manner; AMan seised of Lands in Fee devisable, devises them. to one for the Term of his Life, and that he should be Chaplain (when the Book at large is, That the Devile was to a Clerk for Life, upon Condition that he shall be Chaplain, and fing for his Soul) fo that after his Decease, the faid Tenements should remain to the Commonalty of the faid Town (fc. of Lang-stone) to find a Chaplain for the same Tenements, and dies; and the Devisee being sufficient to be Chaplain, held them for fix Years, and was not Chaplain, and the Heir of the Devisor outled him, and he brought an Affife, and the Heir pleaded to the Affife, and all this Matter was found by the Affile; and the Justices stirred up the Affile as much as they could to fay for the Plaintiff, and at length they faid, that the Plaintiff was feifed and diffeifed: Upon which Case so cited, the Justices, as it is there reported, so collected; for it feemed to the Court there, That the Limitation that he should be Chaplain, and fing for him. was not a Condition for the Breach of which the Heir could enter, for thereby the Rem'r would be defeated, &6. In which Cafe are two great Mifprifions; one in the Citing, the other in the Application of it. 1. That the faid Devise was to the faid Clerk upon express Words of Condition, that he should be Chaplain, as appears before, the other in the Application, That it should not be taken for a Condition, but for a Limitation; and to that Purpose the Case was cited. And without Question it ought to be either a Condition or Limitation: And if it was admitted to be a Limitation, then it is not possible for the Plaintist in the Assis to recover, for then his Estate, if it were a Limitation before the Bringing of the Affife, was actually determined: Por fuch is the Nature of a (a) Limitation, to determine the Estate without Entry, and then the Freehold in Law was vested in the Commonalty of Lang-stone, for a Stranger shall take Advantage of a Limitation, and by Consequence it was not possible that the Pl. who had lost his Eflate by Force of a Limitation, should recover in the Affife. But in the Book it is taken for a Condition, for there Birton faith, That they in the Rem'r can't enter, for it is a Condition; and it appears, that the Heir can't enter, un-(b) Dy. 127. b. de sequitur, that the Remainder has (b) destroyed the Condition: For the Book faith, That the Heir can't enter and have the Land only for the Life of the Plaintiff. By which it appears, That in such Case Words of express Condition; (which are omitted in the Citing of the Case, shall not be taken for a Limitation, but rather void by the Limitation of the Remainder over: For when it hath Words of Condition, the Manner

(a) Co. Lit. 214. b.

1 Rol. 472.

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Manner of the Devise is to intend that the Heir may enter, as it is expressly said in the Book, and therefore it shall not be taken for a Limitation, to give Benefit to him in the Remainder, and it would be dangerous to make a Construction against express Words, but if the Case had been, as in the said Scholaftica's Case it is cited, s. That he devised the Land to one for Life, and that he should be Chaplain, there might be more Colour to say that it should be a Limitation by Confruction, because they are, neither Words of express Condition, nor legal Words of Limitation; and therefore there Peradventure the Law would construe 'em fo, that they might take Effect; as in the Case betwixt (a) Hamond (a) Cr. El. 2041 and Wellock, reported by me in the 3d Part of my Reports fo. 3 Co. 20. b. 20, 21. This Word (Paying) shall amount to a Limitation Cro. Jac. 57, in a Will by Construction, because in Law it is not any Word, \$27, 592. either of Condition or Limitation; and therefore in a Will it Latch. 9, thall serve as well for the one as for the other, to supply the Bridg. 138.

Intent of the Devisor. And so the Authority of the Book of 1 Mod.Rep.86.

Vaugh. 271. (b) 29 Aff. 17. is against that which was cited in Scholastica's Carter 93.226. Cafe. And hereby you may see (good Reader) how dangerous Swinbing, 114. it is to ground an Opinion upon any Abridgment, as in an- 2Rol.Rep.219. other Place I have observ'd: For Fitzherbert in abridging the Goldsb. 134 Case of 29 Ast. Tit. Assis 281. (d) abridges it without any (b) Ant. 40. 43 Words of express Condition; as it is cited in Scholastica's Cafe. (c) & Co. 25. 21 But Br. Tit. Condition 111. abridges it to be upon express Poft. 117 b. Condition, Sed (e) melius & tutius est petere fontes quam (d) Plo. 412.b. fectaririvulos. And as to the said Case in (f) F. N. B. it is (e) Ant. 118. a. cited in Scholastica's Case in this Manner: A Man devises (f) F.N.B. 201. Lands in London to his Wife upon Condition, That if the marries, that the Lands shall remain to his Son in Tail; and for want of such Issue, the Remainder to the Right Heirs of the Donor in Tail; the Wife marries, and the and her Husband occupy the Lands, he in the Remainder dies without Heir of his Body; the Right Heir of the Donor shall have a special Writ of Ex gravi querela, &c. So it appears, That he in Remainder shall have Advantage of the Condition, if it be broke: But that shall be by way of suing this Action, and not to enter by Force of this Condition not performed, which Writ appears in the Register. And the Justices faid, That the Words of the Condition there mentioned, are not properly a Condition but Words of Limitation, for that the Sense is such. A Man devises Land to his Wife for a Term if the shall so long continue sole, and if she marries, the Remainder in Tail, the Remainder to his Right Heir, so that the Marriage is the Limitation there which determines the Estate, and so the Remainder commences upon the Estate ended there; which Case so put by Fitzberbert

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out of the original Writ in the Register was utterly mistaken in 2 Points. 1. Because the Devise to the Wife in the Case put in F.N.B. was upon express Words of Condition, but inspecto Registro, fo. 246. the Devise was upon apt Words of Limitation, s. Habend' sibi ad totam vitam suam si ipsa in pura viduitate fua tenuerit (and not upon express Words of Condition as its there cited) ita qd' si ipsa alicui maritaverit, vel ad aliquem virum se traxerit in fornicatione, tunc mesuagi-um prad' cum pertin' I. & baredibus de corpore suo legitime procreatis remaneret, & si idem I. fine berede, &c. obierit, tunc mesuagium pred' cum pertinen' ad rectos beredesipsius W. reverteret. 2. Where Fitzherbert saith, That the Right Heir can't enter, it is clear that the Right Heir may well enter, because he has the Reversion by Descent, and not by (a) Dy. 127. 2. Hob. 30. way of (a) Remaind. And I have feen a Report in Hill 3 & 4 P. & M. which Dyer Serjeant moved in C. B. Wm. Butts (b) 2 Rol. Rep. (b) Doctor of Physick was feifed of divers Manors, Lands and Tenements in Fee, and having Islue 3 Sons, William, Edmund and Thomas, by his Will in Writing devised Part of them to his Wife for Life, fub conditione quod ipfa educabit pueros testatoris in eruditione & bonis moribus; the Remainder to Thomas his Son in Tail, and the Reversion in Fee descended to William his eldest Son: The Condition was broke; the Question was, If the Heir should enter for the Condition, or Thomas should enter as for Breach of a (c) Dy. 117.b. (c) Limitation; or if the Condition be destroyed by the Limitation of the Remainder over. And it was refolved by Sir Rob. Brook, Ch. Justice, & totam curiam, That cleerly it is not a Limitation, for there are express Words of Condition, and the Meaning of the Testator was, That his Heir, who always is to take Advantage of a Condition, should enter, and (d) i Rol. 473, (di defeat the Estate of the Wife: But his Meaning did not agree with the Law, for he could not defeat the Estate for Life unless he defeated the Remainder, and therefore by the (e) Dy. 127. a. Limitation of the Remainder over, the (e) Condition was destroyed: But in such Case his Meaning never was, that he in the Remainder should enter for the Condition broke. Nota Reader, There are in Law apt and legal Words, as well of Limitation as Condition. Apr Words of (f) Limita-

tion are quamdiu, dummode, dum, quousque, durante, &c. v. 14. E. 2. Grant 92. a Rent granted out of the Manor of

Dale, quamdin the Grantor shall dwell there. Vide 7 E. 4. 16. quamdin fuer' amicabilis, 27 H. 8. 29. b, 3 E. 3. 15. a. & 3 Aff. p. 9. A Man Leafes Land dummode the Lessee shall pay twenty Pounds, 37 H. 6.27. A Lease is made to a Woman dum sola fuerit. 9 E. 4. 29. b. A Man made a Feoffment in Fee until, s. quousque the Feoffor

(f) Co. Lit.

had paid him certain Money (a) 21 Aff. p. 18. Vide 13. (b) El. (a) Br. Affi. 230. Dy. 290. acc' Pl. Com. 414. (c) 35 Aff. P. 14. A Leafe for Years, if Br. Condit. 106. the Leffee shall so long live, 14 H.S. 13. A Lease of Lands till he (b) 2 Co. 57. be promoted to a Benefice, &c. Lit. Chap. Condit. 90. (d) during 1 Rol 388.2 Ro. the Coverture; all these and many others, are Words of Limi- Jenk. Cent. 2881 tat. by Force of which, the Estate is determin'd without Entry (c) Br. Estates 36. Br. Tail. 201 or Claim. Words of (e) Condit. are, fub conditione, it a qd fi con- Firz. Tail 17. tingat, proviso, &c. Vide Lit. c. Condit. 74 & 75.3 H. 6. 7. a.b. 5 Co. 9. b. 27. H.8. 15. Dy. 28 H. 8. 13. 4 M. Dy. 139. 15 El. Dy. 318. 32 (d) 5 Co. 116.2. H. 8. Dy. 47. But these Words, ad effectum, ea intentione, ad (e) 2 Co. 70.b. folvendum, or other the like, do not make a Condition in Feoff- 71.b.72.a.3Co. ments or Grants, unless it be in the K.'s Case, or in a last Will, 21.2.5.Co.78.b. as it was refolv'd Past. 18 El. by all the Justices of the Common Godb 418.1Rc. Pleas. And so you will the better understand your Books, in 407,410.Cr.El. (f) 38 H. 8. 34.a. the Abbess of Sion's Case. 31 H. 8. Br. tit. 385,486.2And. Conditions 191.8 E. 2. Aff. 412. 5 E. 2. Br. Condit. 204. F.N.B. 20.Co. Lit. 203. 131. 41 (g) E. 3. 17. b. 41 Aff. 3. 35 H. 6. 7. S 57. per Maile. 7 116, 117, 118, H. 4.22. Sir Sim. Beverley's Cafe. Doctor and Student, lib. 1. c. 119. Goldf. 130, H. 4.22. Sir Sim. Beverley's Cafe. Doctor and Student, lib. 1. c. 119. Goldf. 130, Moor etc. 20. 10 E. 3. 44. 32 E. 3. Annu. 30. 8 H. 6. 23. b. Plow. Com. in 131. Moor 57, Brown, and Beston's Case 141. a. (b) 7 E. 6. Dy. 79.3 E. 6. (i) 231. Lit. Sect. ib. 65. But in Case of a Grant Executory (Pro) (k) makes a 328, 329, 330. Condition; as a Grant of an Annuity pro confilio impendendo, 311.Br. Con (1)41 E.3.6. a. b. 19. m) 38H. 6. 26. 9E.4. 20,21. A Difference 3H.6.6.b. betwirt a Thing (n) executed and executory Dy. 23. El. 369. Dy. 13. pt. It was also observed, That in Scholastica's Case, Jo. Clerk who 30. Br. N. C. was so supposed to be restrain'd, first levied a Fine, which Fine 152. Hard. 10, (for any Thing that appear'd in the Record, or in the Case re- 11. Lit. Rep. ported) was a Fine at the Com. Law, and then it is a Discontinuance and Wrong, and therefore might be restrained by Con- 66, dition. And Hill. 36 El. Rot. 339. in the K.'s Bench in the same (g) Br. Condi-Case of Scholastica it was resolved, for the Matter in Law on 20. by Popham Ch. Justice, and two other Justices of the K.'s 46 Bench against the former Opinion, but Judgment was there i Rol. 408. given upon an incurable Imperfection in the Verdict.

As to 4. Objection, That this Opinion, That Ten't in Tail (1) Dyer 65. can't be restrained from suffering a Common Recovery, was 1 Rol. 408. new and of a late (0) Invention; it appears by the Authorities Co. Lit. 204. 2. before-cited, and by Littleton also, that it is not new, (k) Cr. El. 274. but well proved by our ancient and later Books: And Co. Lit. 204. 2. it is well said by one, Quod novum judicium non dat 2 Sand. 350. jus novum, sed declarat antiquum, quia (p) judicium (1) Br. Annuity est juris dictum, & fer judicium jus est noviter revelatum quod diu fuit velatum. And it is true, that the Law sometimes (m)Br. Confleeps, and a Judgm. wakens it: For, (q) dormit aliquando ler, 38 H.6. 26. b.

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(n) Winch, 117 Dyer 369. pl. 53. 9 Co. 50. 2.
(p) Co. Lit. 39. 2. 226. 2. 236. 2. 2 loft, 359. 573. 3 Buift. 39.
(q) Co. Lit. 279. b (9) Co. Lis. 179. b.

moritur nunquam. And this was the only Point on which Judgment was given in this Case against the Plaintiff. And it was observed, That these Perpetuities were born under some unfortunate (a) Constellation; for they in so great a Number of Suits concerning them in all the Courts in Westminster, never had any Judgment given for them, but many Judgments given against 'em, viz. Hill. 31 El. in the Exchequer-Chamber in (b) Chudleigh's Case, Mich. 34 & 35 El. (c) Hunt & Capel's Cafe in the Exchequer-Chamber, Hill. 37 El. inter (d, Cholmley & Hunt in Communi Banco, & Hill. 37 El. inter (e) Germin & Arfcot in the same Court. Hill. 30 Moorist Jenk. El. in (f) Corbet's Case in Communi Banco. Mic. 3 Jac. in the King's Bench, Sir Anthony (g) Mildmay's Case; and (b) Sonday's Case in the Court of Wards 8 Fac. Reg. All which Goldf. 5. (b) Sonaay's Case in the Court of Wards & fac. Reg. All which (d) 1 Co. 86. 2. Cases I have reported, and in all which Judgment was gi-6Co. 43. a. Cr. ven against the Perpetuity, and from these fettered Inheri-378 I And tances the Freeholds of the Subject are thereby fet at Li-346.2 And. 142, berty according to their original Freedom.

But it was moved also, admitting, That such Conclusion (c) 1 Co. 85. a. to suffer a Common Recovery might be restrained by Con-6Co. 43 a. Moor divion if the Conclusion of a Ferme Covert in that Case by dition, if the Conclusion of a Feme Covert in that Case by Deed indented should be a Forfeiture of her Estate. And 2 And 2. Bridg. it was objected, That when a Woman levies a Fine, or fuffers a Recovery with Voucher, the Law which enables her to the 660.40 a Moor Principal, enables her to make a Declaration of the Use 601,633. 2And. thereof, as it is agreed in (i) Blith and Colgate's Case: And 124. Winch. 56. fo if an Infant, or a Man non sana memoria levies a Fine, and 3 Keb. 177. (c) 6 Co. 40.a. makes Indentures to declare the Use thereof, the Indentures shall not be avoided for Infancy, or non sana memoria, because they are enabled to the Principal, and therefore shall not be disabled for the Accessory. And so was it refolved in the Court of Wards by Wray and Dyer Chief Iu-Rep. 259, 286. Stices, in the Case of Hugh Lewing, who was an (k Idiot, and fo found by Office, and had levied a Fine to one Winne, and declared the Use thereof by Indentures, which was pretended to be to the Use of the Ideot and his Heirs, because the Indentures, as it was objected, were void, but non allocatur for the Cause aforesaid; and therefore in this Case the Conclusion by the Husband and Wife by Indenture to suffer a Common Recovery, was a Breach of the Condition. But the Chief Justice held, That this Conclufion of a Feme Covert was of no Force, nor any Cause of Forfeiture; and for that some of the Maxims of the Law are to be confidered, That no Feme Covert shall be barred by her Confession of her Inheritance or Freehold, but when she is examined by due Course of Law, 15

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(1) B. Cover- E. 4. 8. (1) 44 E. 3. 28. a. Vide 14 E. 4, 5. And none ture & Infancy has Power to examine a Feme Covert without Writ, Vide

(a) Poft.113.b. (b) 1Co.120.2. 6 Co. 43. 2. 11 Ca. 80. a. Pop.70: 1 And. 309.Jenk.Cent. 276. Moor546.

3 Keb. 177. 6. (c) 1 Co 61. b. 2Co.12.b. Pop. Cent. 250.

364.4Leon.83. 1 And. 186. 135. 1 Jones 5 y. Moor 632.

Swinb. 112. 2Rol Rep.468. Bridg.137.Lir.

(h)9Co.127.b.

(i) 1 Co. 127. (k) Hob. 224. Winch. 106.

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ch Vide 21 E. 3. 43. b. John de Holborn's Cafe. And that is (a) 1 Rol. 347. the Cause, That if the Husband and Wife acknowledge a Fitz. Estop. 68. er a my Statute or Recognizance, it is void as to the Wife, although Reg. 150. b. the furvives her Husband, as it was held Pasch. 17 El. Br. fairs enrol. in the Countels of Lennox's Case. So if the Husband and 11, 17 Br. Co-Wife (a) acknowledge a Deed to be inrolled, and it is N.C. 109.Kel. inrolled, it is void as to the Wife. Vide 29 H. 8. Br. Faits 18. b. 14. E 3. inroll 14. 7 E. 4, 5. 2. 16 H. 7. 5. b. & 21 F. 3. 43. b. and (b) Co. Lit. the Reason is, because no such Writ is depending against the 380.b. Moor 75. Husband and Wife, upon which the Wife by Law may be 76, 460. Kelw. examined. But (b) if an Infant acknowledges a Starute 10. b. F. N. B. or Recognizance, it is not void, but voidable by Audita 59. Yelv. 88. querela during his Minority; and the Caufe of the Dif. 1 And.25.pl. 54ference is, because the Judge in Case of an Infant may by 2 Inst. 673. Inspection know his Age, but not whether a Woman be 2 Rol. 573. Inspection know his Age, but not whether a Woman be 2 kol. 573.

covert or not. And the Usage has always been upon a (c) (c) 1 Rol. 347.

Common Recovery against Husband and Wife, to examine Coverture and the Wife, and to grant Dedimus potestatem to take her Infancy of Acknowledgment upon Examination, as in Case of a Fine; Statusm Fines for there is a Writ upon which she may be examin- 1.2 Rol. 395. ed. Vide 44 E. 3. 28. a. But a Common (d) Recove- (d)Co.Lit 386. ry against an Infant, although he appears by Gardi- b. Cr.Car. 307. an, shall not bind the Infant, for the Infant has not 318.2Rol.395. Acknowledgment upon Examination, as in Case of a Fine; Statham Fines fuch a disposing Power of the Land as the Husband 573. 1Rol.731, fuch a disposing Power of the Land as the Husband 773. 152. Still and Wife have, but is utterly disabled by Law to con. 751, 752. Still. vey or transfer his Inheritance or Freehold to others 48, 49. 1 Leon. during his Minority. And in these Days a Common 211. Hob. 196. during his Minority. And in these Days a Common 211. Hob. 1962. Recovery appears to us to be a Common Conveyance 197. 2 Saund. and Assurance of Lands. But if a Feme Covert levies 94.95.1Sid.321, a Fine, it shall bind her and her Heirs, if the Hust 484 Cr.El.323. band doth not enter and avoid the Estate of the Co-Bridgm. 75. nusee, because she was examined, and has Power of the Jenk Cent.299. Land. But the Reason that it cannot be a Forsei-Noy 140. Hetl. ture or Breach of the Condition in the Case at Ray 171, 172. Lev s ture or Breach of the Condition in the Case at Bar 171, 172. Leys is, because the Conclusion by the Indenture only, and (e) 1 Rol. 346. presently by the Pretence of the Plaintiff, was a Determi- 18 H. 6. 27. a. nation of the Estate of Elizabeth, and then the Recovery 9 H. 6. 33. b. was not of any Essect, because the Estate of Elizabeth was 7 Co. 8. a. b. Hob. 225. 7 H. 4. determined by the Conclusion by Indenture before the Re- 23. a. 2Rol.20. covery, and it was not material whether there was any Br. Estop. 55.

Recovery or not: for the pleading is. That by the Con-Recovery or not; for the pleading is, That by the Con- de terres 32. clusion the Estate determined: So that in this (ase it can't I Jones 457. be said, as it was affirmed, That when Husband and Wife 17 And 16 According to the Coverture 77.

Some of the Br. Fines key Principal, shall not be disabled to the Accessory; for here detenes 75. this Proviso disables them to suffer a Recovery: And 17 E. 3. 57. against the Indenture the Wife may plead, (g) non est 78.

Factum, and therefore it is no more than Husband (g) 5Co.119.2 and Doct. placit.

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and Wife have concluded without any Recovery. But this Point was not resolved, because Judgment was given upon the other.

Trin. 38 Eliz. Rot. 2302.

In the King's Bench.

Jennings's Case, cited in the Case before.

(4)1 Ander.275. 3 Co. 60. b. Moor 690. Antea 39. b. Cr. El 562,570. Winch. 43. Co. Entr. 667. Num: 16.

BEtween (a) Wiseman and Crowe the Case was such : Thomas Wiseman had Issue two Sons, William by his first Wife, and Thomas his younger, and a Daughter by Dorothy his second Wife, and being seised of Lands in Fee held in Socage, by his Will in Writing devised them to the said Dorothy his Wife for Life, the Remainder to Thomas his Son in Tail, and died, by which the Wife was leifed for Life, the Remainder to Thomas the Son, and the Reversion of the Fee descended to the said William. The said Daughter married Jennings, and after the Stat. of 14 El. c. 8. a Common Recovery was had against the said Dorothy being Tenant for Life, in which Thomas in Remainder in Tail was vouched, and in which Thomas vouched over the common Vouchee without any Affent of the faid William the Heir in Reversion, which Recovery was to the Use of the said Thomas and his Heirs, and afterwards Thomas died without Issue; Jennings in the Right of his Wife, being Sister of the whole Blood to Thomas, entred, upon whom William the Plaintiff entred, upon whom Crowe the Defendant by the Commandment of Jennings re-entered, upon which Re-entry this Action of Trespass was brought: And if the faid Common Recovery had barred the Reversifion of the faid William, notwithstanding the said Act of (b) 14 El. was the Question. And in this Case four Points were resolved. It. That at the Common Law a Recovery against Tenant for Life with Voucher upon a true Warranty and Recovery in Value would bind him in the Remainder, as the Books are in 19 E. 3. Recovery in Value 20. 23 E. 3. ib. 13. 44. Aff. p. 35. & (c) 5 E. 4. 2. b. and the Reason is, because the particular Estate and the Estate in Remainder are but one Estate, and one Warranty may extend to both,

(b) 1 And, 275.
Moor 690.
3 Co. 60. b.
Cr. El 562,570.
Winch. 43.
Antea 37. a.
2 Leon. 62.
(c) Raym. 322.
Br. Vouch. 111.
Br Recovery in
Value 33.
Br. N. C. 70
Antea 37. b.
2 Leon. 65.
4 Leon. 127,
131.
Raft. Recove-

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both, and therefore the Recompence in Value shall enure to both the Estates. And it appears by the Preamble of the Act of (a) 32 H. 8. c. 31. That a Recovery suffered by (a) Cr. El. 562. the Tenant in a real Action against Tenant for Life by Co- 3Co. 61. a Co. vin, and not upon a true Warranty, would either bar him in 38. 2 Leon 61, the Remainder or Reversion, or at least toll them of their 62.41.con.126, Entry. But now it has been resolved in (b) Pelham's Case 127, 128, 129. in the first Part of my Reports, That a Common Recovery ries 3. had against Tenant for Life only is a Forfeiture of his E- (b) 2 Leon 60, state, because a Common Recovery is now but a Common 67.1 Co. 13,15. Conveyance or Assurance. Vide (c) 5 Aff. pl. 3. (d) 14 E. 3. b. 4 1 con 123 Resceit 135. (e) 22 Aff. 31. (f) 18 E. 3. 28. b. Mo. 271, Poph

2. It was resolved, That no Act has been made to preserve 23 Co.Lit. 356. any Reversion or Remainder expectant on an Estate-Tail; 3.362.2. Vaugh. for an Estate-Tail is an Estate which by Possibility may en- 2 Co. 74. 2, dure for ever, and Tenant in Tail has Power to bar him in 1Rol. Rep. 304.

Remainder or Reversion, and therefore the Stat. of West. 3Co. +b. 5Co. Remainder or Reversion, and therefore the Stat. of West. 40. b.

2. (g) c. 3. (which was made at the same Parliament, that (c) 3 Co. 4. b.
the Statute de (h) donis conditionalibus was made) for the 2 Leon. 60,63,
Preservation of him in the Remainder or Reversion, gives 66. 4 leon 124,
Resceit to them, and provides for them in these Words, Co. Lit. 356.2 Rescent to them, and provides sol them. Relief to them, and provides sol them. Anglie, vel aliter 362.a.Br.entre ad terminum vite, vel per donum, in quo reservatur reversors Br. Forfeiture fio, fecerit defaltam, admittantur baredes, vel illi ad quos deterre 29. (pettat reversio, and altho' the Statute faith per donum; 1 Rol. 853 which by the Letter extends to Donee in Tail, yet the 1 Co. 15. b.

Judges knowing as well the Possibility of the Continuance 3 Co. 4. b. of the Estate-Tail, as his Power to dock him in Reversion Co. Lir. 252. or Remainder, extend the faid general Words by Constructi- 2.2 Leon 62,66. on to the Estate of the Donee in Tail after Possibility of Isfue extinct, who in Truth has an Estate but for Life, which (e) 21.con. 61, is but Part of the Gift, for an Estate of Inheritance was gi- 63, 41.con. 128, ven, and now the Donee has but an Estate for Life. And (g) 2 Inst. 342, therewith agree 20 E. 3. Resceit 17. 39 E. 3. 8. b. 33 H. 6. 343, &c. 22. and the Book in 2 E. 2. Resceit 147. is ill reported, and (b)+Leon 129. is to be intended of Tenancy in Tail after Possibility, and &c. not of an Estate-Tail; And therefore in 42 E. 3. 12. b. the Rait Tail 1. Case is remarkable, Lands were rendred by Fine to Robert and Alice his Wife in Tail, the Remainder to Thomas in Tail, faving the Reversion to the Donor, Robert died without Iffue, Alice his Wife was impleaded in a Pracipe quod

reddat, who made Default after Default, for which one Simon the Right Heir of the Donor who had the Reversion in Fee, furmifing that as well Robert as Thomas were dead without Issue, prayed to be received; the Demandant counterpleaded the Resceit, because Thomas who was in the Re-

mainder in Tail had Issue John, who yet was alive: And the Demandant's Counsel made two Objections against the Resceit;

b. 4 1 con 123,

(a) 2 Co.92. b. 50E. 3,4.2.2Rol. 829.2Inft.301. 1 Co. 81. b. Lit. Rep. 256.

Br.Refceit 18.

(6) 2 Rol. 436. (6) Reg. 122.a. R.2.c.3.Vet. N. B. 112. a.b. F. N. B. 108. a. 3Co.4.a.b.61.a. 2Bul.15.Palm. 291, 253. Dyer 1 pl. 5. Cr. El. (d) Gr. El 562. Co. Lit. 362. 2. 4 Leon. 126, 127, 128, 129, Raftal Recovepectant on an Estate for Life, &c. and not on an Estate ries 3

first, that the Estate of the Donee was not immediate to the Estate of Alice, fed non allocatur, for there it is said that it was adjudg'd, That if Land be leafed for Life, the Remainder to another for Life, faving the Reversion to the Lesion, that he in Reversion had been received notwithstanding the mean Remainder: And it is true, that it was so adjudged in 11 E. 3. Resceit 118, where the Case was, there was Tenant for Life, the Reversion to E. for Life, the Reversion of the Fee to R. Ten't for Life was impleaded in a Precipe, and living E. R. prayed to be received, and there Hill objected against the Resceit, that the Statute gives that he to whom the Reversion is immediate after the Death of Ten't for Life shall be received, and we have feen that he to whom the Reversion was, where there was a mean Estate for Life, has brought a Writ of (a) 5Co.76.b. Co. Waste, and was not received to that Writ; which Case of Waste, 58.c. 59.h. Moor was well agreed, and the Difference taken between that and the Cafe at Bar, because in the Action of Waste it was to defeat the mean Estate, but here it is to save the mean Estate: And 4 E. 2. Reseeit 160. agrees. The second Objection in the faid Book of 42 E. 3. was, because there was a mean Estate in Tail (which the Book calls a Fee mediate) betwixt the Ten't for Life, and he in the Reversion in Fee, and where there is Fee mediate, he in Reversion by Force of the said Stat. shall not be received; and fo the Case is there ruled, that he was not receivable; and the Difference is taken, where the Remainder is limited over for Life, there he in Reversion shall be received; and the Reason is because he who in Remainder has no higher an Estate than the Tenant himself has, but in the Case here there is a Fee mediate between him who prays now; and the Ten't who might have been received if he had come, and afterwards the Def. faid, That there was no fuch John in rerum natura. But note Reader, if he Reversion in Fee, and he in the Mesne Estate for Life at the same Time prayed to be received, the meine Estate for Life in respect of the Immediateness and Proximity shall be preferred before the Reversion in Fee, for the Words of the Stat. being general, s. admittantur bæredes vel (b) illi ad quos spectat reversio, the Law which always respects order of Proximity prefers the small and next Estate, be it in Remainder or Reversion for Life, before the great and remote Estate in Fee; and therewith agrees 24 E. 3. 32, a. b. in Pierce de Grimstead's Case. And (c) the Star. which gives the Writ of Error and Attaint to him in Reversion during the Life of Tenant for Life, &c. gives no fuch Remedy to him in Reverfion expectant on an Estate-Tail. Vide the Marquess of Win-Anders. 38. chefter's Case in the third Part of my Reports.

Leon 61, 62. And the Statute of (d) 32 H. 8. c. 31. provides only

27, 128, 129. for the Preservation of the Reversion or Remainder ex8

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only extato ail ; Tail and to this Effect that all Recoveries by Agreement against Tenant by the Courtely, Tenant for Life, in Dower, Ten't in Tail after Possibility of Issue extinct, of any Lands, So. whereof the Ten't shall be seised as Ten't for Life, Tenant by the Courtely, or Ten't in Tail after Possibility of Isfue extinct, shall be void against those then in Reversion, &c. fo that by this Stat. no Provision was made for the Preservation of the Reversion or Remainder expectant on an Estate-Tail. 53. It was resolv'd, That fundry Evasions were invented out of the said Stat. of 32 H. 8. and therefore if after that Stat. Tenant for Life had made a Lease for Years, and the Lessee for Years had made a Feoffment in Fee, and the Feoffee had fuffered a Common Recovery in which the Ten't for Life was vouched, and in which he vouched over the Common Vouchee, that this was out of the Purview of the Act of 32 H. 8. for two Regions. 1. Because the Ten't for Life at the Time of the Recovery against the Feoffee was not seiled for Life, but had bur a Right.2. He in the Remaind. or Reversion had not then, s. at the Time of the Recovery, the Remainder or Reversion, but only a Right, for all was devested by the Feoffment of the Leffee for Years. And so was it held in C. B. Trin. 5 El. & 15 El. that in the like Case where (a) Tennt for Life in such Common Recovery came in as (a) 1 Co. 15. 2: Vouchee, that it was out of the Stat. 32 H. 8. as Bendloes Serjeant has reported. And that was the Reason, as it also 211.2. N.Benl. appears by the Preamble of the said Act of 14 El. of the Ma- 4 Leon. 128. king of the same Act, viz. Where divers Persons being seised, 2 Leon. 63. or that had been seised, &c. for Life, &c. have permitted and Co. Lit. 362.a. suffered themselves to be vouched by other Persons by Agree- Palm. 230. ment or Covin between them, &c. to the great Prejudice of those to whom the Reversion or Remainder thereof hath appertained or ought to appertain, J 4. It was resolved, That fion or Remainder expectant on an Estate-Tail, where Te- 39. b. nant for Life is impleaded, and Ten't in Tail is vouched; Cr. El. 562, I and therefore all the Parts of the Act were confidered. 1. The 570. Co. Lit. Title of the Act is. For application of D. Title of the Act is, For avoiding of Recoveries suffered by Collusion by Ten't for Life, &c. and this Title doth not ex- Moor 690. tend to the Case at Bar for two Reasons. 1. A Recovery can't be faid by Collusion, where Ten't in Tail is in the Recovery Ten't in Fact, or Ten't in Law, as Vouchee, for the Law, as incident to his Estate, has made the Land, and all Remainders and Reversions subject to his Pleasure, and he has Right and Power to bar them all, & jus & fraus nunquam cobabitant; and therefore the Title of the Act being for avoiding of Recoveries by Collusion, &c. can't extend to a Recovery where Tenant in Tail is Parry or Privy. The second Part of the Act is

the Preamble, and that doth not extend to the Case at Bar for four Reasons. 1. The Words of the Preamble are, Whereas divers Persons being seised, or that have been seised of Lands, &c. as Tenants by the Courtesy, Tenants in Tail after Possibility of Issuestinct, or otherwise only for Term of Life, or Estates determinable upon Life or Lives; so that the Intent of the Makers of the Act was to avoid Recoveries against Ten't for Life only, and not when Ten't in Tail is Parry or Privy.

2. By Agreement and Covin between them; and (as it hath been said) Covin can't be when Tenant in Tail is Parry or Privy.

3. Against the same particular Tenant; and in this Case the Recovery against the particular Ten't doth not bar the Reversion, but the Vouchee of Tenant in Tail and his Vouchee over.

4. Have permitted and suffered themselves to be vouched, &c. so that the Vouchee of Ten't for Life, and not the Tenant in Tail was intended to be prohibited.

The third and principal Part of the Act is the Body of the A&; 1. That fuch Recoveries against such particular Ten'ts, &c. and in the Case at Bar the Recovery against Ten't for Life doth not bar the Reversion, but the Judgm. given for Ten't in Tail to have in Value, that binds the Reversion, as has been faid before.2. Or against any other with Voucher of any such particular Tenant; which clearly doth not extend to the Case at Bar, forasmuch as Ten't in Tail is Vouchee.3. The Proviso, That all and every such Recoveries (which relates to Recoveries by Covin, &c. mentioned before in the Title, Preamble, and Body of the Act) which doth not extend where Tenant in Tail is vouched, and that fuch Recovery shall bind those who affent of Record are affirmative Words, and do not diminish the Vigour and Force of a Common Recovery in which the Ten't in Tail is vouched, and in which he vouches, who by the Law has Power of the Land, as has been faid before; and it would be very mischievous it this A& should not be so taken, or rather if this A& should be expounded against the Writ and the Intent also thereof: For the common Assurance is, That Ten't in Tail of Land with the Remainder or Reversion over, bargains and fells the Land by Deed indented and inrolled to another, against whom the Writ of Entry in the Post is brought, and he vouches the Tenant in Tail, and he vouches over, God forbid that the Estates of Subjects which depend on such Recoveries should be drawn in Question, and yet the Bargainee in such Case has but an Estate determinable on the Life of Tenant in Tail. Also if Tenant for Life be impleaded in a Precipe, and makes Default after Default, and he in Remainder in Tail is received, who vouches over the Common Vouchee, it shall bind the Estate-Tail, and the Remainder or Reversion also. And therewith

Manx. Cafe pl.

agrees Knyveton's Case, 8 Eliz. Dyer (a) 252. Vide (a) Dyer 252. (b) Owen and Morgan's Case. And Judgment in the pl. 97. Case at Bar per totam curiam nullo contradicente was 6 Co. 77. 2. given for the Defendant against the Plaintiff: Upon 2 Rol. 395, which the Plaintiff brought a Writ of Error, and the 493.

Judges of the Common Pleas, and the Barons of the Golds. 27.

Exchequer (c) agreed with the Justices of the King's (b) Golds. 26. Bench, That the said Recovery had barred the Plaintiff's 4 Leon. 26,
Reversion; but for insufficient Pleading, the Judgment was 3 Co. 5.2.6.b. reversed. 1 Anderson 162.

pl. 108. Cr. Car. 321. 1 Jones 324.

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(c) 1 Anderson 276.

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Mich. 10 Jac. Regis.

Lampet's Cafe.

Brownl. 172. Cr. Jac. 460, 461.2 Rol. Rep. 218, 315.

R Ichard Lampet brought a Writ of Ejectione firma against Margery Starkey, and declared on a Lease made by Will. Lampet and Elizabeth his Wife by their Indenture, 18 Junii 8 Jacobi of an House, twenty-four Acres of Land, eight Acres of Meadow, and twenty Acres of Wood, with the Appurtenances, in Cawe Hamborne in the County of Gloucester for four Years, &c. and declared of an Ejectment, &c. and averred the Life of Elizabeth. The Def. pleaded Not guilty, and the Jury gave a special Verdict as to the faid Meffuage, and half an Acre of Land, Parcel of the Tenements aforesaid, and as to the Residue, they found the Defendant Not guilty; and as to the faid Messuage and half Acre they found, That John Lord Lumley, Richard Lewkener and John Lampton were seised of the said House and half Acre of Land in Fee; and by their Indenture 14 Maii anno 35 Eliz. demised to John Morrice the Younger the faid House and half Acre for the Term of 5000 Years, by Force whereof he entred, and was thereof possessed, and 11 Octob. 38 Eliz. made his last Will and Testament in Writing, and thereby devi d to John Morrice his Father the faid House and halffe Acre, for the Term of the natural Life of the said John Morrice the Father, and after his Decease, the Remainder of the said House and half Acre to Elizabeth the Sister of the Testator, and to the Heirs of the Body of the said Elizabeth, and made John Morrice his Father his fole Executor, and 20 Oct. Anno 38 El. died of the faid House and half Acre possessed, after whose Death John Morrice the Father took upon him the Charge of the Execution of the faid Will, and into the faid Meffuage and half Acre of Land enter'd,

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and was thereof possessed prout lex postulat; and the said Elizabeth took Husband Wm. Taylor, quodq; postea, s. 26 Julii ann' 1 Jac' iid' W. Taylor & Elizabetha, ad special' instant trad J. Morrice Sen per quodd script' suum dederunt, concefserunt, remiserunt, relaxaverunt, sursum reddiderunt, assignaverunt & transposuerunt, Anglice, yielded up diet Johan Morrice sen' totum pred mesuag & pred dimid acr' pastur' cum pertin', una cum toto recto, tit', interesse, tempore & termino suis de & in eisd' habend' & tenend' totum dictum mesuag' & dimid' acr' pastur cum pertin' prasat' Johan' Morrice sen' pro & duran toto statu, fine, & termino pred Will Taylor & Eliz' pro & durant' residuo dict' termini 5000 annorum tunc venturorum. And afterward J. Morrice the Father, 1 Octb' an' 2 Fac' by Indenture demised the said House and half Acre to the faid Margery Starkey now Def. for ten Years; and afterwards the faid W. Taylor died, and the faid Elizabeth took to Husband the faid W. Lampet, and afterwards 15 Nov' ann' 7 fac fo. Morrice the Elder died, after whose Death the faid William and Elizabeth entred into the faid House and half Acre; and made the Lease to the Pl. mentioned in the Declaration, by Force whereof the Pl. entred, and was thereof possessed till the Def. ejected him. Et si super tota materia, the laid Margery were guilty or not, was the Question. And this Case was oftentimes in several Terms argued at the Bar. and now this Term by the Judges; and the Effect of all their Arguments was, First, in every Matter in Law status questionis, causa dubitationis, the Cause of Doubt or Question is first to be considered; and in this Case the Cause of the Doubt is, for a fmuch as the whole Term fub modo is in 7. Morrice the Father, and he shall be punished for Waste, and an Action of Debrlies against him for the Rent, as it was resolved by the whole Court in this Case. Vide Weldon's Case in Plo.Com. 524. a. b. acc. If the faid Grant or Release made to the said John Morrice the Father, then being possessed of the whole Term as aforesaid, can bar the said Elizabeth, because she hath but a Possibility, and neither Interest or Right in Possession, Reverfion or Remainder, and that was the great Question of the Cafe. But two other Questions, as appears afterwards, were moved in the Case, which without Difficulty were resolved. This Case of a Devise of a Lease for Years to one for Life, and after his Death to another during the Refidue of the Term, (a) Moor 615. hath produced septem questiones vexatas & spinosas. 1. When Cr. Jac. 198, a Man being possessed of Land for Years devises the Use or 460, 461.

Profits of the Land, or the Land it self to one for Life, and af-Swinb. 134. terwards to another during the Residue of the Term, if the 8 Co. 55,96.a. Devise of a Chattel after the Death of the first Devisee was 2Rol. Rep. 218, good, and adjudged as appears in Manning's Case, in 220.
the eighth Part of my Reports, that such (a) executo Cr. El. 796. ry Devile was good. And so was it held fer tetam curiam B. N. C. 209.

in the Argument of this Cafe. The 2d Question hath been, if the executory Devise after the Death, &c. be good, when the Term it felf (and not the Use or Occupation) was devised to

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the first for Life, &c. and afterwards to others; and adjudg'd, That in fuch Case also the executory Devise was good, as in the faid Case of Manning appears; and so was it resolved in the Argum. of this Case by all the Justices. The 3d Question hath been, If the first Devisee after Assent made by the Executor, might (a) bar the execut. Devife, being but a Possibi-

Bridgman. 55. Cr. El. 504. Plow. 524: 2.

(c) 1 Rol. 619. Cr.El.223,347, 348. Moor 350, 351. Goldf. 185. Plow. 520. 2. Dy. 277. pl.59. 1 ones 59.

(d) 2 Brownl. 173, 175. 1 Bulft. 192, Raym. 146. Cr. Jac. 510. (e) 2 Brownl. 172, 173. Cr. Car. 479.

(f) 2 Rol. 405. Br. Stat. Merchant 25. Br. Execut. 82. Br. Release 37. 2 Brownl. 174 Co. Lit. 265.2. Hob. 46. 174 1 Co. 111 b. (b) Co. Lit. Lit. Sect. 446. Lib. 1. f.111.b. (i) Br. Release Br. Feoffment de terres 10.

(a) 8 Co.96.2. lity, or not; and adjudged he could not; and fo was it unanimoully agreed in the Argum, of this Cafe. The 4th Question (b) 1 Rol. 620. has been, If the Affent of the Execut. to the first Devisee (b) 3 Bulst. 123. Should enure to the other forefranch as he has is here. should enure to the other, forafmuch as he has it by execut. Devise, and not by Remainder: And adjudged it should: And so was it granted per omnes in the Argum: of this Case. The 5th Question hath been, When the Devise is us supra to the Execut. for Life, and afterwards to another, &c. and the Execut. entreth (c) generally; it hath been adjudged, That he shall have it as Execut. which is his first and general Authority, and not as legatory without Claim or Demonstrat. of his Election, altho' the Teffator were not indebted to any; and so was it ruled by the Court in the Argum. in this Cafe. The 6th Question has been, If such execut. Interest might be granted to a Stranger during the Life of the first Devilee; and adjudged it could not, as appears in (d) Charter's Case cited in Fulwood's Case, in the 4th Part of my Reports, f.66. and therewith agreed the Opinion of all the Justices in the Argum. of this Oafe. J And now the 7th Question is, If such (e) Possibility may be extinguished by Grant or Release to him in Possession. And it was objected, That the said Possibility could not be released, for inafmuch as an Estate during the Life of a Man, is more than any Term for Years; and that the Land in the Case at Bar is devised to Jo. Morrice the Elder for his Life, the whole Term is in him determinable by his Death, fo that the faid Eliz. had nothing but a Possibility which can't be released; as in 27 E. 3. Execution 130 and (f) 25 Aff. pl. 7, If Conusee of a Stat. or Recogn. Releases to the Terr-Tenant all his Right in the Land, yet he shall sue Execution; fo if the g) Son in the Life of his Father, releases to the Diffeifor of his Father, and afterwards the Father dies, this Release shall not bar the Son, because the Son in the Life of the Father had but a Possibility. And therewith agrees (b) Littl. c. Releases, (i) 11. H. 4. 33. a. & 17 E. 3.87. 10 E 2. Confirm. 24. And it is putin 13 E. 1. tit. Confirm. 24. asa Maxim, If a Man quit claims his Right before the Right falls to him, the quit Claim is void. Vide 19 H. 6. 62. a. And therewith agrees Bracton lib. 2. fol. 58. b. Item vidend' quando quis possi: confirmare; & sciendum non priusquam juseiacciderit. But in the Cafe at Bar, the Release is made by the Husb. of Eliz. before

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before the Right or Interest vested in the Wife; and as Bra- (a) 2 BrownL Eton saith, priusquam jus ei accideris. And it appeare, that 173,1Bulft. 192 it is but a Possibility, because it can't be granted or assign'd Raymond 146. to another, as it was adjudged in (a) Carter's Case, no more (b) Dy 244.2 pl. than a Rectory which is appropriate in futuro after the 1 Co. 155.2. Death of an Incumbent, can be demised in the Life of the Co. Lit. 352.b. Incumbent, because it is but a Possibility, as it is held in 8 El. Br. Appropria-Dy. 244 (b) And (c) Hoe's Case in the 5th Part of my Reports fol. 70, 71. was strongly urged, where the Case was, (c) Moor 469.
That in an Action of Debt brought by Hoe in the K.'s Bench, Golds. 166. Cr.
Phelix Marshal was Bail for the Def. and afterwards before
265.b.Post.51.2 any Judgm. given, Hoe released to Marshal all Actions, Du-Cr. Jac. 401, ties and (d) Demands, and afterwards Judgm. was given a-451, 623, 171. gainst the Def. and on his Default a Sci fac' issued against 1 Sid. 141. 2Bulit.231,286. the faid Phelix, who pleaded the faid general Release, upon Hutt. 12. Poph. which the Pl. demurr'd. And it was adjudg'd, That the Re- 136. Winch. 56. which the Pl. demurrd. And it was adjudg d, That the Re-leafe should not bar the Pl. because before Judgm. it was (d)8Co.153.b. but a meer Possibility, and therefore as the Book faith, it could I Brown! not be released. So in the Case at Bar before the Death of J. 115. 2Rol.Rep. Morrice the Elder, Elizab. had but a meer Possibility, and 20.Cr.Jac.300, therefore it could not be released. But it was resolved per to- Sect. 508.2Rol. tam curiam. That the faid (e) Release had barred the said 406,407. Bridg. Elizab. to claim any Thing in the faid Leafe after the Death 122,12420 Aft of the said J. Morrice the elder. And first was observed the 8,9.4 E. 3.48. great Wisdom and Policy of the Sages and Founders of our 34H.8. Releases Law, who have provided, that no Possibility, (f) Right, Ti- 90. Hob. 216.
Noy26. Hut. 17. tle, nor Thing in Action, shall be granted or assign'd to Stran- 1Bulft. 178. Yel gers, for that would be the Occasion of multiplying of Con- 214,215. Cr. El. tentions and Suits, of great Oppression of the People, and 551,552. Lit. chiefly of Terr-Tenants, and the Subversion of the due and o- 56. qual Execut. of Justice. And as they can't be granted by the (e) 1 Jones 17. Act of the Party; so a Right in Action shall not be transfer- Cr. Car. 479. ed by A& in Law, as to the Lord by (g) Escheat, neither 266. a.b. 2Rol. shall the Lord (b) of a Villain have Things in Action, as ap-Rep. 319.

pears in 22 Aff. pl. 37, &c. Also it is resolved in the Marq. of (c) Godb. 310.

When the chiral Part of the Reports of the Control of the Br. choice in Winchester's Case, in the third Part of my Reports, f. 2. b. That by the general Words of an Act of Attainder of Trea- Garranty 45. on, by which all Lands, Tenements, Rights and Heredi- Doctor and ments of the Person attainted are given to the King: Yet Br. Voucher no (i) Right to Land in Action is given to the King, and 132.1 Co.136.2. Il that was for the Quiet and Repose of the Terr-Tenants, Co. Lit. 117. 2. But all Rights, Titles and Actions may by the Wisdom and Br. Villenage olicy of the Law be released to the Terral enant, for the 3/.

ame Reason of his Repose and Quiet, and for avoiding of (i) Hob. 342.

Moor 125. Contentions and Suits, and that every one may live in his Vo- 2Rol Rep. 319. ation in Peace and Plenty. And therefore a Right or Title to reehold or Inherit. (for here it is not spoken of collateral Pow-

Action 8. Br.

(c) Raym. 146. ers) be it in presenti or futuro, may be (a) released in five ManCo. Lit. 268.a. ners. 1. to the Ten't of the Freehold in Fact, or in Law, without any Privity. 2. To him in Remainder. 3. To him seised of
the Reversion without any Privity; but an Estate can't be enlarg'd without Privity. 4. To him who has Right only in respect of Privity; as if the Ten't be difficised, the Ld. may release his Services in respect of the Privity and Right, without
any Estate. 5. In respect of Privity only, without Right; as if

(b) 2 Rol. Rep. 322, 323, 417, 429. Co. Lit. 268, a. 269, a. Godb.313,314. 3 Co. 29. b. 1 Jones 73. (c) Sect. 454.

any Estate, 5: In respect of Privity only, without Right; as if (b) Ten't in Tail makes a Feossim. in Fee, the Donee after the Feossim. has no Right; and yet in respect of the Privity only, the Donor may release to him the Rent and all Services, saving Fealty: So the Demandant may release to the Vouchee in Respect of Privity only, but no Estate can pass by Release, but to him who hath an Estate in Privity, and not in respect of the Right or Privity, only. Vide Litt. (c) c. Releases 105, 106. a. b. 19 H. 6. 17, 23. 14 H. 8. 8. 7 E. 4. 13. 14 H. 4. 38. 1 H. 5. Grant 43. 7 E. 4. 27. 5 E. 4. 1. 5. E. 4. 3. 43 E. 3. 8. 31 E. 3. Gard 116. 13 H. 4. Consistence. 20 H. 6. 29. 8 H. 4, 5. 7 E. 4. 13. 9 H. 7. 25. 18 E. 3. 12. 5 E. 3. 36. 7 E. 3. 46. 22 H. 6. 12. (d) Litt. 114. b. So if the Tenant makes a Feoss, pending the Writ, the (e) Release of the Demandant to him is good in the respect of the Privity. And if

(e) & Co.151.b. makes a Feoff. pending the Writ; the (e) Release of the Demandant to him is good in the respect of the Privity. And if Lessee for Years be ousted, and he in the Reversion disseled, and the Disselsor makes a Lease for Years, the Lessee who was ousted may release to the Lessee of the Disselsor, and yet there wants Privity; but the Disselsee can't Release to

(d) Sea. 490.

yet there wants Privity; but the Diffeise can't Release to him, because he hath no Freehold, 49 E. 3. 38 v. 19 H. 6. And the said Release hath extinguished the future Interest of the said Elizabeth, for (f) divers Reasons.

(f) Winch. 57. The 1 Reason. (g) 8Co.95.b.

(b) Co. Lit.

215. 2.

may be more (g) easily created than a Freehold; so it may be more easily determined. And therefore if a Man makes a Lease for Years, and that upon not Performance of a collateral Condit. that it shall be void, the Grantee of the Reversion shall take (b) Advantage thereof by the Com. Law: But

1. Because it is of a future Interest in a Chattel, which as it

otherwise it is of a Lease for Life upon the like Condition, for the one may more easily be determined than the other. And if Lessee for 1000 Years be ousted by the Lessor, and he makes a Lease for 2 Years, the Lessee for 1000 Years may release to him. But if the Lessor disselses his Lessee for Life, and makes a Lease for 10000 Years, the Lessee for Life can't release to him, for a Freehold is higher than to merge

in a Chattel.

The 2 Reason. (i) Sect. 648. Co. Lit. 343.2. 1 Co. 147. b.

(k) Palm. 48.

2: Littl. (i) faith, c. Discont. f. 144. That it is a Maxim in Law, That Land in Fee-simple, &c. may be charged by one way or other: So it was said, That it was a Maxim in Law, that every Right or Title, or Interest, in present or future, by the (k) joyning of all who may claim any such Right, Tit. or Interest, may be barred or extinguished and therefore upon the Maxim which

which Littleton puts it was concluded, That if at the Com. Law the Donor and Donee in Tail had (a) joined in a Grant (a) Co. Lit. of a Rent-charge, and afterwards the Donce had died without 45. a.2 Rol.64 Iffue, and the Land had reverted to the Donor, he should hold it charged, and yet he had but a (b) Possibility at the (b) Palm. 48. Time of the Charge made: But all those who had Estate or Interest in presents or futuro, joined in the Charge: A fortiori, if they had joined in a Lease for Years, and the Donee had died without Issue, the Lease is good against the Donor. So upon the 2d Maxim, If in the Case at Bar John Morrice the Elder, and Eliz. had joined in a Deed of Affignment to another, without Question it had utterly barred the said Elia. for no other had Interest either in presenti or in futuro, but those who joined in the Grant. So when the Husband of Eliz. releases to him in Possession, both consented to it, one in releasing, the other in accepting of it: And in the Case when both join in the Grant, it is the Grant of him who has the Term, and the Release or Confirm. of the other. Vide (c) (c) Poph. so. Mayow's Case in the 1st Part of my Reports, f. 146. b. a nota- Winch. 31. ble Case to this purpose. And Pas. 4 F. 6. in Com. Banco as Lane 38. the Ch. Just. said, he had seen a Report, It was held by Moun- 9 Co. 140. a. tague, Hales, Molineux and Brown, Justices of the Com. Pleas, Co. Lit. 277.b. That if a Man makes a Lease to another for 21 Years, if the Leffee shall so long live, and the Leffer and Leffee join in a Grant by Deed of the Term to another, and afterwards the Leffee dies within the Term, the Grantee shall enjoy the and during the Refidue of the Term absolutely. So in the Case Bar, where the Interest of J. Morrice the elder was deterninable by his Death, now this Release has made his Inteeft absolute during all the Refidue of the Term. And if cesty we use after the Stat. (d) I R.3. and before the Stat. 27 H.8. (d) Post. 123.4. and differifed the Differifor of his Feoffees, now the Use is b 131. b. uspended, and depends in possibility to be revived by the En- 1 R. 3. c. 1. ry of the Feoffees, and yet if he makes a Feoffm. in Fee it 331, 333, 3344 is good and shall bind, in respect that the Law has Conside
1 Co: 87. 2.

88 2. 123. 2. b. fation of this Possibility of the Use.

3. Quan do diversi desiderantur actus ad aliquem statum 131. b. 142. 20 Perficiendum, plus respicit lex actum originalem, when to the 135. a. 132. be Perfect. of an Estate or Interest, divers Acts or Things are re- 2 And. 74, 87, while the Law has more regard to the original Act, quia 136.

e) cujusq, rei potissima pars est principium, for that is the fun- (e) Co. Lite. amental Part on which all the others are founded. In this Cafe 248. b. t Bar 3 Things are requifite to the Perfect. of the Interest of lize the Devise (in which is included the Death of the Deilor) and that is the fundam. Part; the Assent of the Execuor, which also appears afterwards, was given in the Case; and he Death of the first Devisee: And therefore this Case may tly be refembled to the Case of Dower, when a Man seised Lands in Fee or in Fee-tall general, takes a Wife, to the erfection of the Dower (f) two Things are requisite, Plow. 373, a. awful Matrimony, and the Death of her Husband 1 For Co. Lit. 11. 1. potwithstanding her Husband is seised in Fee, and 12. a.

(a) M. 6E. 2. ower 145. (b) 2 Go. 93.2. Post. 99, 2. Cr. Jac. 333. Mo. 53. pl. 154. 5 Co. 124. a. (c) 4 H. 7.c.24. Co. Lit. 262. a. 326. a. 372. a. 3 Co.85.b.87.a. b.88 a.b.89.a. 90.a.b.77.b.91. a. 8 Go. 100. b. Co.14c.b.141. oCo.140.0. b.105.2.b.5Co. 123. b. 124. 2. 10 Co. 96. a. 11Co.71.2.Pal. 255. Goldf. 171.Sav.85,88, 106.1Leon.77, 213.2And.115. 2 Rol. Rep. 402, 500,501.1Rol. Rep.153.3Bul. 152.2Leon.53, 157.3Leon.10, 227.1 And 170. Poph. 108, 114. 3.pl. r.72. pl. 3. Rastal Fines 8. Hop. 334. (d) Dy.72.pl.3. Co. Lit. 326 2. Moors3.pl.154. 8 Co. 72. b. 1 Rol. Rep. 91, 160.11Co.63.2. (e)Co.Lit.221. Sol. Co. Lit.

the Marriage is lawful, yet the has but a Possibility of Dower. till the Death of her Husband; in the same Manner as Fliz. has but a Poffibility till the Death of the first Devisee: And therefore in 6 E. 2. (a) Dow. 145. and 19 E. 2. Dower 165. where it is held, That in a Writ of Dower brought by the Wife, a Fine levied by the Husb. and Wife is no bar; and the Reason there given is, because before the Death of the Husb. the Wife had no Right of Action; and therefore by the Rule of the Court Issue was taken, that the Wife at the Time of. the Fine levied had nothing but as Wife. And the Opinion of Plow. in Stowel's Case (b) 373. a. is as follows: Note Reader, that in my Opinion, If the Husband levies a Fine with Proclamations, and 5 Years pass after the Proclamations, the Wife shall not be bound to five Years after the Death of the Husb. but is at large, and not touched by the Purview of the Act of (c) 4 H.7. For the Purview was against those who had right at the Time of the Fine levied, or had future after right upon a Cause arising before; to which future Right Wrong was done before the Fine, or by the Fine, &c. but here in case of Dower, the Title is accrued all after the Fine, s. by the Death of the Husb. for till the Death no Title was confummate: And the other two Points, s. Intermarriage and Seisin of the Husb. are not of any Moment without the 3d, so 3 Inst. 216. Dyer that all the 3 Points are but one Cause after the Fine. But at this Day the faid Books of 6 & 19 E.2. are not held for Law: 182.pl.52.54. For now no Question is made, but that if the Husb. and Wife 6. b. Plo.360.b. levy a Fine, the Wife is barred of her Dower for 2 Reasons. 9 Co. 104. b. 1. Because the Intermarriage and Seisin are the fundam. Causes 7 Co. 32. 2. of Dower and the Death of the Husb but as an Execut thereof of Dower, and the Death of the Husb. but as an Execut, thereof. 2. All those who have Estate or Title, or Claim, join in the Assurance, and therefore in such Case, if the Husb and Wife have granted a Rent by Fine out of the Land, or have made a Leafe for Years, rendring Rent to the Husb. and his Heirs, and afterwards the Wife recovers Dower, she shall hold it charged with the Rent and with the Term, according to the b.Dy.224.pl 28. Maxim which Littleton puts before. And the Opin. of Plow. Palm. 235. Co. aforefaid, is not held for Law, as appears in 6 E. 6. (d) Dy. 72.
93.2. Goldf. 148. and in Dampart's Cafe in 5 El (e) 224 Dw it appears it was (flit sect. 357. and in Damport's Case in 5 El. (e) 224. Dy. it appears, it was Co.Lit.221.2 b. adjudg'd to the contrary in 4 H. 8. and now common Experi-(g) Perk. Sect. ence without Contradict. is against it. And (f) Litt. o. Condi-221.2.b.222.2. tions f. 83. holds, That if Feoffee upon Condit. takes a Wife, 2Co.59.b.79.a. the Feoffor may enter for the Condition (g) broken, and the 2Co.59.5.79.2. the Feoffor may enter for the Condition (g) broken, and the 13H.7.23.5.Br. Reason is, because the Law hath principal regard to the oricondit 26,217.

44Ass 26.20H. ginal and fundamental Cause; and yet it may be said, that the 6345.5Co.21.2 Title of Dower is not consummate till the Death of the Huscr.El.450,479. band, and that paradventure the Wife may die before 2And.18 Moor the Husband. So in the Case at Bar, the Devise and 110. Hutt. 48. Assent of the Executor, are the original and fundamen1801.547.448. tal. Causes of the Interest of Elizabeth, and the Death of 1Rol.5 47,448. tal Caufes of the Interest of Elizabeth, and the Death of 3 Co 29. a. b. John Morrice the Elder is but a Mean to produce it in

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Possession, but that gives nothing, but all the Interest accrues by the Devile, and is executed by the Assent of the Executor; and therefore as well as in the Case of Dower it may be released. And Sir Anth. Fitzberbert in his (a) N. B. 98. (4)F.N.B.98.2. holds, That if a Man levies a Fine of Land in ancient De- Cr. Car. 478. mesne at Com. Law to another, now the Lord in encient Demesne shall have a Writ of Disceit against him who levies the Fine, and him who is Ten't, and thereby he shall annihilate the Fine, and the Conusor shall be restor'd to his Possession and Title which he had given by the Fine. And therewith agree (b) 21 E. 3. 20. b. & (c) 7 H. 4.44. a. against an Opinion (b) Firz. Desceit Obiter in (d) 17 E.3. 31. b. But if the Conusor after the Fine 44. releases to the Conusee by his Deed being in Possession, or (c) Br. Disceit by his Deed (e) confirms his Estate in the Land, then the (d) Fitz. Desceit Opinion of Fitzberbert is, That the Conusee shall retain and 37. have the Land, notwithstanding the Fine is avoided, because (c) Cr. Car. 478. this Release or Confirmation made to him being in Possess. makes his Estate firm and rightful against him and his Heirs, who releases or confirms: Which Opinion was affirmed for good Law by the whole Court in this Case; and yet after the Fine levied, the Conusor had no right in the Land, but only a Possibility to have the Land again after the Fine made void by Writ of Disceit brought by the Lord of whom the Land is held. And Warburton Justice cited (f) Grant's Case, (f) 2 Leon. 36. adjudged in this Court, Hill. 29 El. rot. 824. where the Case 3 Leon. 211, was, That Wm. Grant seised of Land in Fee held in Socage, Golds. 107. by his Will in Writing devised the Land to John Grant Son 1 Leon. 244. of his Brother, when he came to the Age of 25 Years, To Cr. El. 122, have and to hold to him and the Heirs of his Body, and died, 610.

Hob. 333. having Islue Christian his Daughter and Heir, who married Wm. Marsh, who had Issue John, and the said John Grant after the Age of 21 Years, and before his Age of 25, an. 37 H. 8. levied a Fine with Proclamations, and afterwards he attained to his Age of 25 Years, and had Issue Margaret, and died: If the Estate-tail in future and Contingency at the (g) 3 Co. 90, a.
Time of the Fine levied was beared or not was the Question Cr. Car. 435. Time of the Fine levied was barred or not, was the Questi- Cr. Jac. 591. on; and it was resolved, That the Estate-tail was (g) barr'd; 9 Co. 141. a. and yet the Conusor had but a meer Possibility to have an Cr El. 610. Hob. 258, 333. Estate-tail at the Time of the Fine levied: And that by (h) 1 Leon. 244. Force of the Words of the Stat. of (h) 32 H. 8. c. 36. All 2 Leon. 62, 224. Fines levied with Proclamations, &c. of any Manors, Lands, 3 Leon. 10. &c. before the Time of the same Fine levied in any Wise en1 Anderson 46, tailed to the Person or Persons so levying the same Fine, or to Savil 85, 88. any of his or their Ancestors. &c. And although the said 1 Bulstr. 33.

John Grant was not seised by Force of the Tail at the Golds. 11.

Time of the Fine levied, yet by Reason of these Words 3 Co. 51.2.

(before the Fine levied in any Wise entailed) an Estate-Hob. 258. tail in futuro is comprehended; and all that by Force of 7 Co. 32. 4 b. the said Statute, for partes finis nibil babuerunt: But no 11 Co. 75. 2.

or Possibility which may be released, ought to have a Founda-

tion and an original Inception as is aforefaid, fo it ought to be a necessary and common Possib. which in Cholmley's Case in the 2d Part of my Reports, f. 51. a. b. is call'd potentia propinqua, and a Possib. which depends on the Death of a Man, has a neceffary and common Intendm. s. necess, in respect that all the Sons of Adam must die, Statutum eft beminibus semel mori; and common, that the Death may happen at fuch a Time that (a) 1 Rol. Rep. the Contingency may take Effect, as in (a) 15 H. 7. 10. b. If Lands be given to a married Man and a married Woman, and to the Heirs of their two Bodies begotten, it is a good Estatetail, for it is of Necessiry that Death will follow, and it is a com-Plow 35. 2 mon Poffib. that one will die before the other; fo that Marriage may follow, but in the same Case there shall not be a (b) Possib. upon a Possibility. And therefore if Lands are given (c) Co. Lit. 20. b. to a Man and two Women, there the Law will not intend that he shall first marry the one, and afterwards she whom he shall marry shall die, and that he shall marry the other; and therefore in such Case they are several Inheritances at the Beginning. As if Lands be given to two Men and their Wives, and to the Heirs of their Bodies begott. in that Case the Law will not expect 2d Marriages, but they in that Case shall have Joint Estates for Life, and one Husb. and Wife shall have one Moiety in Tail in common with the other Husb. and Wife of the other Moiety, and so several Inheritances, and therewith agrees 24 E. 3. 29. a. for otherwise there would be a Possib. upon a Possib. And if (4) a Man gives Land to Husb. and Wife (now it is an apparent Possib. that they may have Issue) and afterwards they are divorced causa pracontractus, so that the Possibilis dissolv'd, the Law will never expect a 2d Marriage, for by the Divorce they have but an Estate of Freehold; and (e) 7H. 4.16.5. therewith agrees (e) 4 H 7. 16 & 17. A Woman may enfeoff a married Man causa matrimenii prelocuti, for it is of Necesfity that Death will follow, and it is a common Possib. that the Wife of the Feoffee will die before the Feoffee. So in the common Case of a Lease for Life; (f) the Remaind to the right Heirs of J. S. then alive, the Remaind is good for the necelfary and common Intenden. But the Cafe at Bar is stronger than any of the other Cases, for it is of Necessi. that J. Mor-

> that he will die within 5000 Years, for by the Civ. Law longif-fimum vite bomin' temp' est cent' an': And so it appears that in our Law there is jus proprietatis, possession' & possibilitatis. And as to the Cales which have been urg'd by the Serjeants of the other Part. 1. As to the Release of the Conusee in (g) 27 E. 3 S. 25 Aff. It was refolv'd, That the Books were good Law, for there the Body is the Debtor, and not the Land but in respect of the Body, and the Land is not charged with the

Debt

rice the Father will die, and it is more than a com. Intendm.

Firz, Tail 32. Br. Tail 16. Br. Eftate 22. 1 Co. 120. 2. Br.Condit.119. 25. b. (6) I Rol. Rep. 921 Co. Lit. 25. b. (c)Co.Lit.25.b.

184.2.

(d) 1 Rol. Rep. 321. Co. Lit. 22. 2. 28. 2.

Br. Tail 9. Br. Eftate 11. Br. Deraign-8 Co. 87. a. 5 Co. 8. a. (f) 2 Co. 51.b. Lite 343.2 Poftea 51. 2.

(g) 27 E. 3. Execution 130 25 Aff. pl. 7. Antea 47. b. 2 Rol. 405, 470. Co.Lit.265 b. Cr. EL 552.

Debt till Execution fued, and therewith agrees Plo. Com. 72. in Sir Tho. Pope's Case; and therefore the Release made by the Conusee of all the Right in the Land, shall not bar him of his Execut. And it was agreed, That the Release of the Son to the Diffeisor of his Father in the Life of the Father is utterly void, because the Son has no Right, nor Found. or original Inception of any Right in the Life of his Father. And the Rule put in 13 E. 1. and in Bratton, is to be agreed for good Law, if it be well understood, s. that he who releases has Right, or a Found or origin Incept. of a Right. And as to (a) Hoe's Case, it was also resolved to be good Law, for there (a) 5 Co. 70b. the Thing which should be released, was utterly incertain at Moor 469. the Time of the Release made; for he who becomes Bail in Cr. El 379. K.'s Bench, is not bound in any certain Sum, nor doth any Goldf. 166. Co.Lit.265.b. Co.Lit.265.b. Cr. Jac. 171, and therefore for the Incertainty of the Thing that should be 401,451,623. released, the Release of all Actions, Duties and Demands 1 Sid. 141. can't discharge it. It was further resolved, That when there is Hutt. 12. incertainty in the Person, no Release can be made; and therefore if a Lease for Life be made, the (b) Remainder to the (b) Co. Lit. Right Heirs of J. S. and the Lessee is disserted, and the eldest 2 Co. 51. b. Son of J. S. releases to the Diffeisor, and afterwards J. S. Antes 50. b. dies, the Release is void; for it is incert. whether he would be right Heir at the Time of the Death of his Father. And in 17 El this Case was mov'd at Bar in the King's Bench : A Man made a Leafe to Hush and Wife for 21 Years, the Remaind. to the (c) Survivor of 'em for 21 Years, and the Husb. granted (c) Co. Lit. 46.b. over this Term; and it was held by Wray Ch. Just. and to- 1 Rol 344. tam curiam, That the Grant was void for the Incertain. of the Poph. 5. Person, for altho' all Chattels real which belong to the Wife A Leon. 185. the Husb. may dispose of; yet in this Case neither the Husb. Godb. 139. or the Wife has any Thing till the Survivor. And in the Re-Hutt. 17. gister Original (d) 239. b. there is a Formedon brought on a (d) Co. Lit. Gift in such Form, R. dedit W. & J. uxori ejus & heredibus de 26. 2. corpore alterius ipsorum W. & J. qui diutius viveret exeuntibus, & qd post mortemW. & J. præfato T. filio & hæredi ejusd' W.qui pred J. supervixit descendere debet, &c. So that the Gift was to the Husb and Wife, and to the Heirs of the Body of the Survivor of em: In which Case as to the Estate-tail, there is an Incertainty in the Person, and therefore if they make a Leafe for 21 Years, observing all the Circumstances required by the Statute of 32 H. 8. yet that Lease shall not bind the 4 Lcon. 13?, Iffue; for, for the Incertainty of the Person of the Survivor, 219. the Estate-tail was not vested. And these Cases in my Re- (f)10Co.173.a. ports (e) Albany's Case, (f) Digg's Case, (g) Rawlin's Case, Noor 603.
(b) Mayowe's Case, The Rector of (i) Chedington's Case, and (h) Co. 146.b (k) Altham's Case, were affirmed for good Law in the Argu-Pop. 50.

ment of this Case, and cited to prove the Reason of this Moor 478.

Rule in the Case at Bar.

H 3

4. If

Cr. Jac. 461,

The 4. Reason. 4. If the faid Eliz. had died before the first Devilee, the Executors or Administrators of the said Eliz would have had (a) Moof 907. the Refidue of the (a) faid Term after the Death of the first

Devisee, as appears in the said Case of (b) Weldon in Plo. Com.

1 Rol. 916. which is a great Proof that Elizabeth her self might have
(b) Plo, 519. 2 released such Interest, which by her Death might come to her Executors or Administrators. Bur Words make a Plea :

For if I am diffeifed, and I release all Actions to the Diffeifor, and afterwards the Diffeifor dies, I notwithstanding the Release shall have a Writ of Entry in the Per and Cui against the Heir of the Diffeisor, for this Action was not in

(e) 8 Co.192.2. esse at the Time of the Release mane, and the Co. Lit. 285. 2. lind est quamjus prosequendi în judic q'd sibi debetur, and the faid Writ of Entry was not maintainable at the Time of the Release, no more than if I had died, my Heir should not be barred by the said Release to have a Writ of Entry fur diffeisin against the Disseifor, upon a Disseisin done to me. Vide 22 H. 6. 1. If one bails Goods to another, and afterwards the Bailor releases to the Bailee all Actions, the Bailee dies, in a Writ of Detinue brought against his Executors, they shall not take Advantage of the faid Release, for that determined by the Death of the Bailee, and the Action given against the Executors, is a new Action (altho' of the fame Nature)

grounded on their own Deteiner.

The 5. Reason.

(d) Co. Lit. 161. 2.

(e)1Co.112 b. Co. Lit. 292.b. Cr. Jac. 170, 8 Co. 153, b. Lit. Sect. 513. Dy. 217. pl. 2. 1 Anderson 8. 5 Co. 70. b. N. Bendl. 126. 2 Rol. 404. pl. 190. Moor 34. Co. Enr. 116. Nu. 5. Nu. 5. Yelv. 156. Hob. 216. (f) 5 Co. 71.a. 1 Co. 112. b. 1 Co. 112. b. 2 Bulft. 231.

5. The Legacy or Devise to Elizabeth is in effe and prefent, altho' the Interest is in futuro; and therefore the Legacy or Devise may be discharged, and by Consequence the Interest it self; for (d) qui destruit medium destruit sinem. And therefore if one devise to one 20%, when he comes to the Age of 24 Years and dies, the Legatee after the Age of 21 Years may release this Legacy and Devise; and altho' afterwards he attains to the Age of 24 he fliall be barred thereof, and yet by a Release of all Suits and Demands it is not releafed. As if a Man by Indenture covenants to do a future Act, and before the Covenant broken, the Covenantee releases all Actions, Quarrels and Demands, and afterwards the Covenant is broken, the faid e) Release is no bar in an Action of Covenant, because the Covenant was to be performed in futuro; but a Release of all Covenants had been a good Bar, for the Covenant was in effe & prasenti; and therewith agrees 35 H. 8. (f) Dyer 57. and (g) 4 El. in Bendloe's Reports, which Case is cited at large in Hoe's Case aforesaid, So in the Case at Bar the Devise is in presenti, altho' the Performance thereof be in futuro, & qui evertit causam (e) 5 Co. 70. b. evertit causatum suturum. So de bonis & catallis selonum & futur. 17. fugitivorum, &c. the Inherit incertain, the same Law of Nomine pane, Relief, & similibo.

So the Chief Justice said, That altho' no Assent had been given to the Legacy, yet forasmuch as Elizabeth claimed by executory Devise, she might in the Life of the first Devise have released the Devise and Legacy. Vide (a) Mid- (a) 5 Co. 28.a. dleton's Case in the fifth Part of my Reports, That Exe-Raym. 481. cutors before Probate may release a Debt, because although Co Lit. 192. b. they can't have an Action, yet the Interest of the Action is

in them, which they may release.

6. It would be inconvenient that fuch manner of Perpe. The 6. Reason. tuity should be made of a Chattel, when of an Inheritance neither by Act executed by the Com. Law, nor by Limitation of an Use, nor by Devises in last Wills, any (b) Perpe- (b)Cr.Car.230 tuity can be established. And if it should be allowed, it would be the Cause of Contentions, Suits, and other Incon-veniencies. And it was observed, That these Leases for so many hundred and thousands of Years, (which were made in Truth to (c) deceive and defeat the King or other Lords (c)Co.Lit.46.a. of their Wards or other lawful Duties) are many Times Unfortunate, and subject to be lost by Utlawry, or other Forfeitures; and if the Owner thereof dies Intestate, the Ordinary shall grant Administration, whereby Women will lose their Dowers, Men their Tenancies by the Courtefie, and many other Inconveniences, in Subversion of the Common Law, will from thence ensue; and therefore it would be of all others most dangerous to make a Perpetuity of them.

And the Chief Justice concluded his Argument, as to the principal Point, with a Judgment in this Court, Trin. 28 El. Rot. 1974. between (d) Hammington Administrator of Isab. (d) 1 Leon.92. Oram Plaintiff, and Rudyard and Mary his Wife Adm' of Owen 6. Lawrence Kidwell, in Debt on Bond made by Law. Kid- Gouldf. 59,65. well to the faid Isabel; which Bond was made for Perfor- Moor 249,759. mance of Covenants in an Indenture betwixt Law. Kidwell 2 Sid. 167. and the faid Isabel: And the Case was such; Wm. Hammington possessed of an House in London called Hides House for 31 Years, by his Will devised the Profits thereof to the Moor 759. faid Isabel, during the Time that she should continue sole and a Widow, and afterwards he devised the Term to Reynold his Son, and died, I Mar. Isabel by the Affent of the Executor entred, and purchased the said House in Fee, and the faid Lawrence Kidwell bargained and fold by the laid Indenture the faid House to the faid Isabel in Fee, and covenanted, That the House at the Time of the Assurance should be clearly discharged of all former Bargains, Sales, Titles, Rights, and all other Charges. The Defendant pleaded Covenants performed. The Plaintiff affigned for Breach the said Devise to Isabel, and afterwards to Reynold as aforesaid; and that after the

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faid Indenture, Ifabel had married Oram; whereupon Reywold entred, upon which the Def. demur'd. And in this Case four Points were resolved. 4. That the said executory Devise to Reynold was good.2. Altho' the whole Term was in Isabel quousque, &c. so that by the Purchase of the Fee-simple, the Interest of Isabel was extinct; yet that did not defeat the executory Interest of Reynold, but that after the Marriage of Isabel and not before, he might enter. 3. It was resolved, That Reynold could not grant his Interest over, as long as Ifabel was fold. 4. The great Difficulty of the Case was, for-asmuch as the said Reynold at the Time of the said Covenant had but a Possibility, that the said Covenant did not extend to it: But it was resolved, That the said Covenant did extend to it, and to this purpose had Essence, and also might be forfeited; and Judgment was given for the Plaintiff which Judgment strongly proves that it might be released.

The 2d Question was moved, admitting the Release to the first Devisee to be sufficient to extinguish the Claim and future Interest of the said Elizabeth, if it would amend the Estate of J. Morrice the Elder, who has the entire Term in him, if he lived so long, or if by his Death the Lessors might enter. And it was resolved, That the said Release had confolidated and perfected the Estate of the said J. Morrice, that whereas it was determinable before by his Death, now he has the whole Term in him absolutely. But this Point is over-ruled before in the second Reason on the Report of the Case in (a) 4 E. 6. It was said, That laxure is properly to fet Prisoners in Fetters at Liberty; and relaxare is to do it quickly, and metaphorice, relaxare is to fet at Liberty fettered Estates and Interests, and to make them

free and absolute. The third Question was moved in this Case, Whether

this Case to take the said House, &c. by Force of the Devise. For it was agreed per omnes, as it has been said before, that first he shall take it as Executor. And it was resolved, That when Wm. Taylor and Elizabeth his Wife per scriptum suum, ad specialem instantiam & requisitionem predict Johan' Morrice senioris (who was Executor) relaxaverunt, &c. that amounted to an Assent, for two Reasons; one, because he requested it, which implies an Assent; 2. He ac-(6) 10Co.144.2 cepted it, and that likewise implies an Assent, (b) Non e1 Rol. 300, 303. nim refert an quis assensian suum prabet verbis, an rebus ip-2 Rol. 263.
3 Keble 517. Sis & factis, as 44 E. 3. Fines 37. and Lit. Cap. Attorn(c) Polt. 67. b. ment. If the Husband accepts a Grant of the Reversion,
Fitz. SurrenEcc. it amounts to an Attornment; and in (c) 37 H. 6.
der 3. 17. b. he who has interesse termini, sc. a future Interest, cannot

there appears any Affent or Agreement of the Executor in

(4) Ant.49.2.3

2 Rol. 263.

Br. Surren-

der 21,

cannot by express Words surrender it; but an Acceptance of a new Lease will merge it. And in 7 E. s. 50. b. the Lord demanded a Heriot, and the Heir delivered a Beaft, in which he himself had Property in his own Right to the Lord, it amounted to a Gift. And afterwards in this Term Judgment was given and entred, Quod querens nihil capias per breve, &c.

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Trin. 11 Jac. Regis.

The Case of the Chancellor, Masters and Scholars of the University of Oxford.

HE Chancellor, Masters and Scholars of the University of Oxford, brought a Quare impedit against Richard Bishop of Coventry and Litchfield, Edward Basset Gent. and Hugh Meare Clerk, to present to the Church of Draicot in the Moor in the County of Stafford; and declar'd, That one John Draicot Esq; was seised of the Manor of Draicot in the County aforesaid, to which the Advowson of the Church of Draicot was appendant in Fee, and by his Deed granted the next Avoidance of the faid Church to one George Eyre, and afterwards the said John Draicot died: After whose Death the Manor with the Advowson (a) Moor 836, descended to one John Draicot Esq; Cousin and Heir of the said John Draicot, sc. Son and Heir of Philip Draicot, Son and Heir to John Draicot the Grandfather; and further declar'd, That by an Act of Parliament in the (a) third Year of our Lord the King that now is, it was ordained by Authority of Parliament, That the Justices of Affise and Gaol-Delivery, and Justices of Peace at their Noy 88, 89.

Jenk Cent. 297.

Ley 59.

ces, as well for not receiving the Sacrament according to the true Intent of the same Law, as for not Repairing to Dalt. Just. c. 81.

Cawly 200.

Dalt. Just. c. 81.

Church, according to the true Intent of former Laws. Sessions, should have Authority by Force of that Act to Church, according to the true Intent of former Laws, in such Manner and Form as Justices of Assise and Gaol-Delivery might do by the former Laws, in Case of Reculancy

872. 3 Jac. c.s. I Jones 20. Hob. 73, 126, 226, 227. 3 Inft. 178. Cro. Jac. 352. 1 Rol.Rep. 108. Latch 172, 177. O Bendl. 180. Godb. 216. 4 Leon. 245. Keb. Just. 566, \$67,568,569.

Reculancy for not Repairing to Church: And also should have Power at the Affises and general Gaol-deliveries, and at the Seffions, in which any Indictment against any Person either for not repairing to Church according to the former Laws, or for not receiving the Sacrament according to the seme Law, should be taken, should make Proclamation, by which it should be commanded that the Body of every fuch Offender should be surrender'd to the Sheriff of the fame County, &c. before the next Affises and general Gaoldelivery, or before the next General or Quarter-Sessions respectively to be held for the County, Limit, Division or Liberty: And if fuch Offender should not appear, that then upon the Recording of every fuch Default, it should be as fufficient a Conviction in Law of the said Offence of which fuch Person should be indicted as is aforesaid, as if he had been convicted by Verdict. And where by another Act at the same Parliament it is enacted, That every Person that then after should be a Popish Recusant convict, during the Time that he should remain a Recusant, after the End of the Session of the said Parliament, should be disabled to present to any Benefice with Cure or without Cure, Prebend, or Living ecclefiastical, or to confer or nominate to any Free-School, Hospital or Donative whatsoever; and from the Beginning of the same Parliament should be also disabled to grant any (a) Advowson of any Benefice, Pre- (a) Moor 872. bend, or Living Ecclesiastical, and that the Chancellor, Master and Scholars of the University of Oxford, as soon as any of them should be void, should have the Presentation, Nomination and Collation to every fuch Benefice, Prebend, or Ecclefiastical Living, School, Hospital and Donative, lying or being in the Counties of Oxford, Kent, Middlesex, Sussex, Surrey, Southampton, Berks, Bucks, Gloucester, Worcester, Stafford, Warwick, Wiltsbire, Somerset, Devon and Cornwall, &c. which became void during fuch Time as the Patron of them should remain Recusant convict, as is aforesaid, as by the said Act amongst other Things more fully appears. And the said John Draicot the Son, of the Manor aforefaid, to which, &c. fo being feifed, at the Affiles and general Gaol-delivery for the County of Stafford, held at Staff. within the said County the 29 Day of March, in the 8th Year of the Reign of the King that now is, was indicted as well for not receiving the Sacrament as for not repairing to Church, &c. for three Months, and then was proclaimed according to the Statutes thereof made: And that he at the next Affises held 16 die Augusti anno 8 supradicto, made Default, and did not furrender his Body to the Sheriff; by which the said John Draicot became a

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Edward

Popish Recusant convict, and the said John Draicot of the Manor aforesaid, to which, &c. so being seised as aforefaid, the faid Church became void by the Death of the faid John Eyre, and yet is void, and ea ratione it belong'd to the faid Chancellor, Masters and Scholars to present, and the Defendants disturb'd them, &c. The Bishop pleaded, he did not disturb them, &c. Edward Baset pleaded, That the faid John Draicot the Son, before the faid Convistion of the faid John, being seised of the said Manor to which, &c. sc. 20 Junii 8 supradies, by his Deed granted (a) 1 Jones 20, to the said Edward Basset the (a) next Avoidance of the faid Church, after which Grant the Church became void by the Death of the faid George Eyre; wherefore he prefented the said Hugh Meare, who on his Presentment was admitted and instituted, &c. the said Hugh Meare pleaded, That John Draicot the Coufin was feised of the Advowson aforesaid in Fee as in gross, and confessed the Presentment of George Eyre, and pleaded, That the said John Draicor, I Maii Anno 3 Regis Jac. by his Deed granted the next Avoidance of the said Church to the said Edward Basset, and that the Church became void by the Death of the faid George Eyre, wherefore he presented, &c. the said Hugh Meare, &c. Absq; boc quod advocatio pred' persin' ad pred' manerium de Draicot, &c. 'The Plaintiff as to the Plea of the Ordinary, prayed a Writ to the Bishop, sed cesset Executio, &c. And as to the Plea of the faid Edward, the Plaintiff demurr'd in Law. And as to the Plea of the said Hugh, the Plaintiff replied, Quod advocatio Ecclesia pred' pertin' ad manerium prædictum, & boc petit quod inquiratur per patriam, & pred' Hugo similiter. Upon the (b) (6) 2 Rollito4. Demurrer upon the Plea of the faid Edward, four Matters in Law were moved. 1. Forasmuch as the said John Draicot the Son was not a Reculant convict at the Time of the Grant of the faid Avoidance to the faid Edward Baffet, if (c) Moor 836, the Grant be made void by the faid Statute of (c) 3 Regis Jacobi? 2. If this Grant being made after the Indictment, if it were not covin apparent, and if such Grants should be allowed, to what Purpose would the Clause of the said Statute concerning them serve? 3. Forasmuch as the faid Act gives the Benefit to present to the said Church to the Chan-Roll.Rep. 108. cellor and Scholars of the University of Oxf. and they have brought this Action by the Name of Chancellor, Masters and Noy 88, 89. Scholars of the Univ. of Oxf. which shall be intended their Jenk. Cent. 297. true Name of Incorporat. if they should take any Benefit of the said Act by Reason of the said Misnosmer? 4. Forasmuch the faid Act by Reason of the said Misnosmer? 4. Forasmuch

as the Plaintiffs have not averr'd, That at the Time of the Avoidance of the Church, the said John Draicot continued

and remained a Popish Recusant, if that should be intended? As to the first, it was argued by the Counsel of the faid

Co.Lit.f.125.b.

Hob. 73, 226, 1 fones 20. 3 Jac. c. 5. 3 Inft. 178. Cr. Jac. 352. Latch 172, 177. Antea 53. b.

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Edward Baffet, That by the Words and Intention of the (a) Lit.Rep. 98. faid Branch of the Statute, no Person is disabled to grant (c) Moor 60. the next Avoidance, but he who is a Popish Recusant con-pl. 169. vict; and therefore the Words are, Every Person or Per- Mo. 128, 219, sons that is or shall be a Popish Recusant convict. 2. He 529, 530, 531, shall be disabled but only during the Time that he remains Latch 89, 90. a Reculant; for the Words are, During the Time that he Noy 149. hall be or remain a Recusant, shall be disabled to grant any Godb. 392. Avoidance: And because at the Time of this Grant he was O. Benl. 143, not a Recusant convict, but only indicted, for that Reason 157. Benl. in Kelw. he is not such a Recusant as is described to be disabled by 211. pl. 19. the said Act; and by Consequence the said Grant is good. Benl. in Ash. Also it would be mischievous if another Construction should pl. 19.
be made; for suppose, That one seised of an Advowson in pl. 195.
Fee resorts and repairs to Church, according to the Laws in 1Co.24 b. 27.4. fuch Case established, and for good Consideration grants the 2 Co. 46. a.b. next Avoidance, and many Years after becomes a Popish 3Co.2.b. 7.2.b. Recusant, and is thereof convicted, it would be hard that 73.b.5Co.55.b. this Grant should be avoided, for (a) nemo tenetur divi- 11Co.9.a. 13.a. nare, and it is not possible that the Grantee should have 12 Co. 45. Foreknowledge of it, which is meerly a future Contingent; 374. a. 445.b. and it would be also against Reason, that a Man by his 451. a. 454. a. subsequent Offence should take away a lawful Interest vest- 846. b. Rast. Ent. 525. b. ed by his own Grant, upon good Confideration vested in a 527. a. Stranger. But it was resolved per totam Curiam, That this Hob. 227, 228, Act had disabled the said John Draicot the Son to make 248, 306. Dyer 73. pl. 8, this Grant, by the express Words of the Act, which will 77. pl. 40, 80. the clearer appear, if the material Words of the Act as to pl. 61, 103. this Case be fingled by themselves in this Manner; Every pl. 1,2,3,4,123. Person that shall be a Popish Recusant convict, during the pl. 35, 206. Time that he shall be or remain a Recusant, shall be disabled pl 1, 277. from the Beginning of this present Session of Parliament to pl 60, 280. grant any Avoidance; and the said J. Draicot is within all these Words; for, 1. Where the Words are, Every Person Rast. Monast. 11 that shall be a Popish Recusant convict, within which Words Br. Chose in it appears that John Draicot is. 2. The Disability is tem- Br. Patent 98. porary, sc. during the Time of Recusancy. 3. From what Sav. 66. Time he shall be disabled, sc. from the Beginning of this 2 Rol. Rep. 54. Session of Parliament: So that as long as he remains a Re- 142, 171, 174. cusant convict, he shall be disabled to make a Grant of the 1 Leon. 4, 333. next Avoidance from the Beginning of the Session of the 3 Leon. 55. Parliament, & (b) summa ratio est que pro religione fa- 4 Leon. 117. cit: And such Retrospect divers Acts of Parliament have Cr. Jac. 607. had, and allowed by divers Judgments; and therefore it Cr. Car. 422, is cited in Plo. Com. inter Stradling and Morgan, fo. 207. a. 152. Plowd. is cited in Plo. Com. inter Stradling and Margan, Jo. 2012. 102. 2. 173. 2.

That where the Statute of (c) 31 H. 8. cap. 13. enacts, 102. 2. 173. 2.

That the King shall have all the Possessions of the 1 Jon. 2, 185,

Abbeys 373. Winch

Abbeys 373. Winch Ent. 642, &c.

The Case of the Chancellor, &c. PART X.

Abbeys that then were, and afterwards should come into his Hands by Surrender, &c. in the same State as they then were; it has been adjudged, as it is there faid, That if any College after that Statute makes a Lease for Years, and the same College three or four Years after furrenders to the King, that their former Leafe made before the Surrender shall be void; for the King shall have the Possessions in the same State as then, so. at the Time of the Act of 31 H. 8. they were, and then they were discharged and free from any such Lease: And therewith agrees Mich. 6 & 7 Eliz. Dyer 231. (a) The Abbot of Ramsey with the Assent of his Covent late Patrons of Upwell in the County of Northampton in Aug. 31 H. 8. which was after the Statute of 31 H. 8. of Mona-steries, which began 28 Aprilis 31 H. 8. granted the next Avoidance of the faid Church to 6ir Ed. Mountague Knt. late Chief Justice of the Common Pleas, and afterwards in November following, the Abbot and Covent surrender'd to the King, &c. The Interest of the next Avoidance was by measine Assignments conveyed to one Leeds, against whom Beaupree the Patentee of the Fee-simple by King E. 6. brought a Quare impedit against the Bishop and Incumbent, and by Pleading to Rejoinder the Case aforesaid appeared, and in the Rejoinder the Saving in the faid Act appeared, with such Averment, that the said Leeds non est, nec fuit, nec esse intelligi potest aliquis talis persona, que per, sive in actu predicto excipitur; and by the Opinion of all the Justices, the Grant was void against the King, and so adjudged; and the Saving can't extend to such future Interests, but extends only to interests in esse: And the Record of this Plea began Pasch. 5 Eliz. Rot. 129. in

(a) 1 Co. 47.2. Dy. 231. pl. 1. Benl, in Kelw. 211. pl. 19. Benl. in Afh. pl. 19. 2 Co. 49. 2. N. Benl. 132. pl. 195. Plowd. 207. a.

Communi Banco; and yet in the same Case all the said Objections, which have been made in the Case at Bar, might have been made in the said Case of Beaupree. Also it is (b) 1 Leor. 98. enacted by the Statute of (b) 13 Eliz. c. 4. That all Lands, &c. of every Treasurer, &c. or Person accountable to the Queen for any Office or Charge, &c. which he then had, or afterwards should have, shall be liable, &c. in like and in as large and beneficial Manner, to all Intents and Purposes, as if the same Treasurer had the Day he became first Officer or Accountant, stood bound by writing Obligatory, baving the Effect of a Statute-Staple to her Majesty. And in Anno 35 Eliz. it was resolved in the Case of Sir Christopher Hatton late Chancellor of England, who became such Officer to the Queen anno And in Anno 35 Eliz. it was resolved in the 20 of her Reign, That if fuch Officer accounts well

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and truly with the Queen, and owes her nothing, and Anno 22 of her Reign being in such good Case purchases Lands, and in the same Year conveys or leases them to others bona fide upon good and true Consideration; and afterwards Anno 32 Eliz. by Reason of the said Office he becomes in Arrearages upon his Account for four or five Years, which is long Time after his Conveyance or Leafe; That yet the Land so (a) conveyed or leased, shall be (a) Moor 127. liable to these Arrearages by Reason of the Retrospect of the said Words (as if the same Treasurer, &c. had the Day be became first Officer, &c. stood bound, &c.) So in the Case at Bar, after that the said John Draicot was a Popish Recusant convict, during the Time that he remains a Recufant, he now shall be disabled to grant any next Avoidance, by the Retrospect of the Act after the Beginning of the faid Seffion of Parliament, and the Makers of the Act intended to inflict greater Disability upon them who became Popish Recusants, after the damnable and damned Powder Treason, than before.

As to the second, it was resolved, That (b) Covin shall (b) Cro. Eliz. never be intended or prefumed in Law, if it be not ex- 292, 810.

Bridgm. 112. presy averr'd, Quia odiosa & inhonesta non sunt in lege Cro. Car. 550. presumenda, & in facto quod se habet ad bonum & malum, Jones 20. magis de bono quam de malo presumendum est, and so it Moor 194. Cro. Jac. 451. was adjudged in the Case of (c) Meriel Littleton, Trin. (c)1 Brownl. 36. 10 Jac. in this Court, where the Case was; That Eliza- 2 Brownl. 18 beth Tirer Executrix of the Will of Thomas Tirer, brought Bridgm. 112. an Action of Trespass vi & armis against Meriel Littleton 2 Jones 92. and John Daunser, of an Ox Price 61. at Hagley in the County of Worcester, 20 Octob. 7 Jac. &c. The Defendants pleaded Not guilty; and the Jurors found a Special Verdict, That one Thomas Tirer was seised in Fee of 80 Acres of Land in Hagley, and held them of John Littleton Esq; ut de Manerio suo de Hagley in the said County by Fealty, and the Rent of 3 s. 1 d. ob. feet' Cur', & reddend optimum animal cujuslibet tenentis in feodo simplici post mortem ejusdem tenentis pro Heriotto, of which Manor the faid Meriel Littleton was Tenant for Life at the Time of the Death of the said Thomas Tirer, and the said Tho. Tirer being so seised 16 die Augusti, Anno 42 Eliz. by his Deed in Confideration of fatherly Affection to John his Son and Heir apparent, and in Confideration of a Marriage to be had and folemnized betwixt the faid John Tirer and one Joyce Grove, and for the Advancement of the faid John did enteoff the said John Tirer of the said 80 Acres of Land, To have and to hold to him and his Heirs, to the Ule

The Case of the Chancellor, &c. PART X. of him and his Heirs; by Force whereof the faid John was thereof felfed in his Demeine as of Fee, and fo feifed the faid 16 Day of Aug. an. 42 ejustem nup Reg. by his Deed indented, to the Intent that the said Joyce should not be endowed during the Life of the faid Thom. redemis'd the faid 80 Acres of Land to the faid Thom. for 40 Years, if the faid Tho. should so long live: And that the first Day of Sept. following, the Marriage betwint the faid John and Joyce was folemnized, and after the laid Feoffment the faid J. Tirer did Suit at the Court of the faid John Littleton Lord of the faid Manor; and that after the Feoffment, Thomas paid the (a) 13 Eliz.c.5. P.ent for the faid 80 Acres of Land; and afterwards T. Tirer, 30 Junii, 7 Jac. died, being possessed of the said Ox, which 76.2. 290. a.b. was the best Beast which he had, and that the Defendants Co. Ent. 162. a took the Ox pro Heriotto post mortem pred. T. Tirer, as due for the said Tenements, and the Jury further found the Stat. of (a) 13 Eliz. for avoiding and abolishing of feigned, covenous and fraudulent Feoffments, Gifts, &c. as well of Lands and Tenements, as of Goods and Chattels; which Feoffments, Gifts, &c. are devised and contrived of Malice, Fraud, &c. to the Intent to delay, hinder of defraud Creditors and others of their just and lawful Actions, Suits, Debts, &c. He-Dy. 295. pl. 17, riots Mortuaries and Reliefs, &c. and therefore it is enacted 351. pl. 23. by the faid Act. Thet all Professional Confession is enacted 351. pl. 23. by the faid Act, That all Feoffments, Gifts, &c. of Lands, 1 Leon. 47,308. Tenements and Hereditaments, Goods and Chattels, &c. to be made to any Intent or Purpose before declared and expressed, shall be adjudged and taken (as against the Creditor or other Person so defrauded and grieved) to be clearly and utterly void and of none Effect, &c. And if upon the whole Matter the said Meriel and J. Daunser are guilty, then they find them guilty, and affels Damages to 5 h and Costs 6d. &c. And this Case was argued at the Bar; and Trin. 10 Jac. it was argued at the Bench, and it was unanimously refolved, That forafmuch as no (b) Fraud is found by the Jury, the Court would not adjudge the faid Feoffment to be fraudulent; and although the Jury have found Circumstances and Presumptions to incite the Jury to find Fraud, yet it is but Evidence to the Jury, and not any Matter Hardr. 397. upon which the Court could anjudge I widence concerning Mat(c) Cr. El. 97, of Jurors is to adjudge upon their Evidence concerning Matter of Fact, and thereupon to give their Verdict, and not to leave Matter of Evidence to the Court to adjudge, which does not belong to them. And therefore the Chief Juftice held, That if A. brings an Action on the Cafe against B. upon Trover (c) and Conversion of Plate, Jewels, &c. and the Defend. pleads Not guilty, now it is good Evid. prima facie to prove a Conversion, That the Plaintiff requested the Defend to deliver them, and he refused, and therefore it shall be

presumed, that he has converted them to his Use. But yet it

29 Eliz. cap. 5. Co. Lit. 3. b. 3 Co. 80. b. 5 Co. 60. a. 6 Co. 18. b. Cr. Jac. 270, Yelv. 196, 197. 1 Brownl. 111,

Cr. Eliz. 234,

3 Leon. 57. Raft. Fraud.

Lane 47, 103. Moor 638.

Doct.plac. 200.

Latch 222. (b) O. Bend. 58 b.

1 Roll. 523.

Cr. Eliz. 292,

1 Mod. Rep. 17,

Cr. Car. 550.

495. Cr. Jac. 245. Cr. Car. 262.

Goldsb. 152.

1 Roll. 5.

Moor 460. Vent. 401.

Hob. 187.

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1 Sid. 127. 1 Rol. Rep. 59,

2 Bulitr. 308, 310. . . .

Deeds. 1. Raft. Ent.

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is but Evidence; and if it be found by special Verdict (a) in (a) Hardres fuch Cafe, that the Pl. requested em of the Def. and he refused, 4 it is not a Matter upon which the Court can judge any Conversion: For the Conversion ought to alter the Action of Detinue, to a Trespass upon the Case, which a Denial can't do in Law; for in every Action of Detinue there is alledged in the Declaration a Request and Refusal, yet it is good Evidence, as has been faid, and fo has always been allowed to prove a Conversion, That the Pl. demanded the Goods, and the Def. refused to deliver em. 2. The Stat. tays, to defraud Creditors and others of their just Debts, &c. Heriots; and the Jury have not found, That the faid Feoffm. was made to defraud the Lord of his Heriot, and so they have not found the Case within the Statute. 3. If the Son had died in the Life of the Father, the Lord should have a Heriot after his Death. 4. It is found, That the Intent of the Feoffm, and Redemise for Years made before the Marriage, was to the Intent that the faid Joyce should not be endowed during the Father's Life, but that after his Death she should be endowed, altho the Son had died in the Life of the Father: Which Feoffm: being found by the Jury to be made in Confiderat. of Marriage, and to this particular Intent concerning the Dower of the Son's Wife, shall not be by Construction of Law extended to any other Intent. And thereupon the Ch. J. put the Cale in Mich. (b) 9 & to Bl. The K.'s Ten't in Capite, his Son and (b) Cawl. 2917 Heir apparent of 7 Years, is indebted to divers, and fued for his Debts in divers Courts, and feating the Hindrance and Impoverishm, of himself, his Wife and Children by extent of his Lands, &c. for Execut. of the said Debts enfeoffs divers Perions, fub conditione, That when he or his Heirs shall pay to the Feoffees 30 Lthat then they shall make such Feoffments, and to luch Uses as he or his Heirs shall limit or appoint, or otherwise the Feoffm, shall be void, &c. and this Feoffm, and Intent is found by Mandamus returned in the Chancery, Et qu' mulla alia causa, intentio aut collusio, viz. ad defraudand reg', &c. de Custod' bæred' velterrar': Andaltho' this Feoffm: was found to be made by Fraud and Covin (which is always unlawful) yet forasmuch as the Fraud was to one particular Intent, sc. to defraud Greditors, it shall not be extended to any other Fraud, fc. to defraud the K. of his Ward, altho' in Truth and by the Event, by this Feoffm. the K. was defrauded of the Wardship of the Body and Land, and so was it resolved and decreed in the Court of Wards; a fortiori when it is found that this Feoffm, in the Case of Meriel Littleton was in Consis deration of Marriage, and of Advancement of his Son, and that the Son's Wife should be endowed against the one,

The Case of the Chancellor, &c. PART X.

and not against the other, all which are lawful Considerations, the Court shall not extend it to an unlawful Intent, nor adjudge upon the whole Matter found in that Case, That the Feoffm. was made to any other Intent than is found by the Jury.

As to the 3d Object. in the Case at Bar, It was resolved and answered 3 ways. 1. In an Act of Parliament Misnosmer of a Corporation, when the express Intention appears, shall not avoid the Act no more than in a Will, for Parliament' Testament'& Arbitramentum, are to be taken according to the Minds and Intentions of those who are Parties to them. And therefore when the Descript. of a Corporat. in an Act of Parl. or in a Will is such, that the true Corpor. intended is apparent, and it is impossible to be intended of any other Corpor. altho' the right Name of the Corpor, (which is requisite to be expressed in Grants and Deeds) is not precisely follow'd, yet the Act of Parl. and Will shall take Effect. And therefore in (a) 21 R. 2. Devise 27. where one devised certain Tenements in 523. b.

Br. Corpor. 77.

Br. Corpor. 77.

Holb. it is adjudged there, That this Devise is good to the Corpor. of the Parson of the Church of St. Andr. in Holborn

Corpor. of the Parson of the Descript. was sufficient in a Will to express the Parson of the Church and his Successors: Pari ratione, if a Devise be made to the Univer. of Oxf. or to the City of Lond. or to (b) Trin. Col. in Camb. &c. fuch a Devile is good, and therein the true Name of the Corpor' shall be implied; for by these Descriptions the Meaning of the Devilor is apparent, that the incorporate Body of every of them shall take. So here, when the Parl. gives the Benefice to the Chancellor and Scholars of Oxf. and their Successors, this Descript. is sufficient to express the Meaning of the Makers of the Act, That the Corpor. of the Univ. of Oxf. which has a Chancellor and Scholars, shall take it, and no other Corporat. can take it. 2. The Record is well, for the Act is pleaded as if the Benefice had been given by the faid Act expresly (as it is implied in Law! to the Chancellor, Masters and Scholars; and the Def. has demurred in Law thereupon, and so confefsed it. 3. This Clause which gives this Benefice to the Univ. of Oxf. is a (c) private Clause, whereof the Judges without pleading of it can't take Notice, and therefore now the

> Judges ought to take it as it is pleaded. As to the 4th Object. inspecto recordo, It appears that the Plaintiffs have averred this Feoffm. for after that they have alledged, That the faid J. Draicot the Son was Papalis recujans convictus, they have said, ac præd' J. Draicot de manerio prad' cum percin' ad quod, &c. in forma prad seisit' existen' & Papalis recusans convict' in forma pradiel existens & remanens, Ecclesia pradiet vacavit per mortem prædict' Georgii Fyre. But if the Plaintiffs had not averred it, the Court was of Opinion it had not

a) Hob. 32? Plowd. 345 2.

(b) Hob. 37.

(c) 2 Rol. 456. Plowd. 65. a. Hob. 227.

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been sufficient, because they had not enabled themselves to take Benefit of the said Act; and they need not aver, That he yet continues and (a) remains a Recusant, (a) Hob. 126, for when once the Presentation bac vice was vested in 127, the University, altho' afterwards the Recusant conforms Doct. placit. himself, or dies, yet the University shall present.

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Trin. 11 Jacobi.

The Bishop of Salisbury's Case.

Palmer 483. I Jones 264.

N a Writ of Second Deliverance brought by Simon Stanton and Henry Knap against John Green, of the taking of 127 Sheep at Blewbury, at a Place called The Parsonage Slay in the County of Dorset. The Defendant said, That the Place where, &c. contained fixty Acres; and avowed the Taking, because John Bishop of Salisbury was seised of the Manor of Sherborne in the County of Dorfet, whereof the Place where, &c. was Parcel in his Demesn as of Fee in the Right of his Bishoprick, and so seised ult. Septemb. Anno 29 El, by his Deed shewed forth granted to Ed. Green and the said J. Green, & corum utrique officium supervisoris omnium maneriorum suorum, &c. in Com. Wilts, Dorset, Berks, & Southampt', & alibi infra reg-num Anglia, by them and their Deputies for whom they will answer, To have and to hold to them, &c. for Term And further by the same Deed granted to of their Lives. them a Rent of twenty Nobles per ann. iffuing out of the faid Manor of Sherborne, with Diet and reasonable Expences for them and their Deputies, equitando & alias occupando, arbitrio ejusdem Episcopi & success. suorum, aut auditorum eorum, with Clause of distress si debito modo petatur ; and that the faid Grant was confirmed by the Dean and Chapter 5 Sept. 28 El. in the Life of the faid Jo. Bp. of Salisbury, quodque pred' officium est antiquum officium, quodque dict' officium unacum predict' Feodo 6. 13. 4. &c.

L. 6. 13. 4

conces' fuer' per pred' Johan' Episcop' Sarum & predecessores suos tali persona vel personis quibussibi placuerit. And shewed the Death of E. Green, and that he demanded the Rent. and for want of Paym. diffrained, &c. In (a) Bar of which A- (a) Palm. 483: vowry, the Pl. pleaded the Stat. of a Eliz. by which it is enacted, That all Gifts, Grants, Feoffments, Fines, or other Conveyances or Estates, from the first Day of this present Parliament to be had, made, done or suffered by any Archbishop or Bishop, of any Honours, Castles, Manors, Lands, Tenements or other Hereditaments, Parcel of the Possessions of his Archbishoprick or Bishoprick, or united, appertaining or belonging to any of the said Archbisbopricks or Bisbopricks, to any Person or Persons, &c. ut in Statuto, and further pleaded, 9d' nec officium pred' nec annualis reddity pred' ante concessionem pred', &c. unquam concess fuer' per eundem Episcop' vel aliquem prædece forum suorum pro aliquo longiore tempore quam unio vitæ per qd' concessio præd' per præd' Johan' nuper Epifcopum Sarum vigore acts pred vacua fuit, &c. Upon which bar to the Avowry, the Avowant demurred in Law: And divers Days it was argued by the Serjeants at the Bar, and now this Term it was argued by the Judges at the Bench, and divers Exceptions were taken by the Avowant's Counfel to the Bar to the Avowry.

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1. That the Avowant in his Avowry has alledged by Matter in Fact, That the faid Office had been granted to fuch Perfon or Persons as the Bp. pleased, &c. and the Pl. in his Bar has pleaded in the Negative, that the faid Office, &c. has not been granted but for the Life of one, &c. and therefore he ought to have concluded, & hoc petit quod inquiratur per patriam, but he has concluded all his Plea, & boc paratus est (b) Co. Lit. verificare, &c. & non allocatur : For the Avowant has not Hawk.Max.12. alledged, That the faid Office had been granted, &c. to di- (c) Co. Lit. vers Persons, but to such Person or Persons as the Bishop plea- 303. b. fed, and in (b) disjunctivis sufficit alterum esse verum. J 2. (d) 3 Co.59.b. Another Exception was taken to the Bar to the Avowry, Cr. El. 141,207. That it doth not appear by the Bar to the Avowry, That 1Leon. 205. John Bishop of Salisbury the Grantor was dead, and it shall Sav. 94. be intended that he is alive, because the Plea of every one 1 Ander. 241. shall be taken strongest against him, (c) ambigua responsio (e) 3Co. 60. a contra proferentem est accipienda; and then if he be alive, Cro. El. 473, the Grant of the said Office to two was good, altho it never had 564. been granted to two before, and shall bind the Bp.himself for 3 Keb. 109. his Time; as it has been adjudg'd in 32 & 33 El. in this Court, 1 Mod. Rep20 f. betwixt (d) Sale Pl. and the Bp. of Coventry and Litchfield 1 Vent. 247. Defend. in a Quare Impedit; and Pasch. 39 El. betwixt 1 Rol. Rep. (4) Hunt and Singleton: Which Cases you may see cited in 152, 154, 159, Lincoln

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Trin. 11 Jacobi.

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The Bishop of Salisbury's Case. PART X.

Lincoln College's Case, in the third Part of my Reports fol.

Court. Sed non allocatur Exceptio, because it appears to the Court, that the said John was not now Bishop of Salisbury; for the Plaintiff in his Bar to the Avowry concludes, per quod the said Grant per pred Johan nuper Episcopum Sarum vigore acts pred fuit void, which the Avowant by his Demurrer has confessed; and these Words per pred Johan (a) nuper Episcopum Sarum imply and import that he is not now Bishop of Salisbury. Vide the like Implications 13 El. Dyer 304. (b) & (c) 14 El. Dy. 306. b. so in 10 E. 4. 18. b. (d) If in Trespass the Desendant pleads in Bar, That B. leased to him the Land in which, &c. at Will, by Force of which he entred, and was and yet is thereof possessed by Force of the Lease at Will, it implies that the Lessee is alive, for if he was dead the Lease was determined, and then he could not be possessed.

3. Another Exception was taken to the Avowry, Sc. That the Alledging of it to be (e, antiquum officium, was too general and incertain, but he ought to have prescribed in it, or shewed more Certainty than now he has done: And that was held a good Exception. And this Difference was taken betwixt the Allegation of the Conveyance to the Matter, and the Matter it felf; as in (f) 11H. 4. 89. a. b. there one, to convey to him Title to a Leet, prescribed that he and all those whose Estate he had in the Hundred have had a Leet, &c. & bene, for the Prescription in the Hundred is but the Conveyance, and therewith agrees (g. 19R.2. Action fur le Cafe 51. but when he claims any Thing which lies in Grant by Prescription originally and of it self, he can't prescribe in it by a Que Estate; as (b) Littleton holds fol. 41. 21 H.7. 15. a. &c. So when one will plead Custom in a Town, it is fufficient to say that it was antiqua villa, and shew the Cu-from. Vide 22 H. 6. Prescription 47. & 6 E, 6. (i) Dyer So of an Office, if he claims any Thing appertaining

ficient to fay quod est antiquum officium.

As to the Matter in Law, it was objected, That the said Grant made by the said late Bishop of Salisbury being confirmed by the Dean and Chapter, was not restrained by the said Act of 1 El. for divers Reasons. 1. That this Case was out of the Words of the Act, for it was not any Part of the Possessions of the said Bishoprick, nor appertaining thereunto. 2. They conceived, that nothing is restrained but such Hereditaments whereof on a Lease made for three Lives or 21

to the Office, it is sufficient to say, Quod fuit antiquum officium; but when he claims the Office it self, it is not suf-

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(a) Doct. plac. \$47.
Poitea 62. a.
1 Rol. Rep. 50.
Cro. Car. 401.
(b) Dy. 304. pl. 52
2 Rul. 79, 263.
Palmer 509.
Cr. Jac. 622.
Moor 376.
Cr. Car. 401.
(c) Dyer 306.
pl. 66.
(d) Doct. plac.
247.
Palmer 268.
(e) Hob. 44.
Cr. Car. 500.

(f) 11Co. 44.b.
† Rol. Rep. 76.
2 Inft. 71.
Fitz. Avowry
57.
Br. Diffrefs 18.
Br. QueEstrateg.
Co. Lit. 121.2.
(f) Catter 31.
(c) Lit. feet. 183.
Carter 31.
(i) Dyer 71.
pl. 45.

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Years, according to the Statute, a Rent may be referved, for the Words of the Act are, Other than for the Term of twenty-one Years or three Lives, &c. whereupon the old accustomed yearly Rent or more shall be reserved, &c. and in this Case no Rent (a) can be reserved. 3. A Difference (a) Co. Lit. was taken betwixt an Office in effe in the Right of his Bi- 47.2. shoprick, for that may be said Parcel of his Possessions, and such an Office as the Bishop himself can't exercise, can't be faid Parcel of his Possessions. 4. If a Grant for two Lives with the ancient Fee shall by Construction of the Statute be restrained, then by Consequence a Grant for one Life only shall be also restrained; for by what Words or Construction shall a Grant for two Lives of the said Office with the ancient Fee be restrained, and not for one Life? But it was unanimously resolved per totam curiam, That the faid Grant of the faid Office for two Lives was void a- (b) : Co. 50. b.

gainst the Successor by the said Act of I Eliz.

And in the Argument of this Case, four Things were con- 6 Co. 37. 2. fidered. 1, What the Common Law was before any Sta- 7 Co. 7 b. tute made thereof. 2. What Alteration the Statute of (b) 8Co.34 2.72 2. 32 H. 8. cap. 28. has made. 3. What is done by the faid Co. Lir. 44. 3. Act of 1 Eliz. And lastly, If the said Grant to two of the 333 2. faid Office be restrained by the said Act of 1 Eliz. against Rast. Leases 2. the Successor. 5 And as to the First, it was resolved, That Dyer 72. pl. 3. at the Common Law the Bishop with the Consent of the 162.pl.48.19 Chapter might by their Charters of Feoffments, Grants or pl.22.246.pl.69. Leases bind their Successors; and therefore such Grant to pl.43.363 pl.26. two of the said Office for their Lives had been good by the Sav. 85.pl. 165. Common Law, although it was never granted to two be- Cr. Jac. 173. fore: Wherein was observed the Wisdom of the Sages of the Cr.Car.22,44.1 Law, That no fole Corporation was ever trufted with the 43 Disposal of the Possessions, as to bind his Successors, but in I Rol. Rep. fuch they ought to have the Consent of others, as the Bi- 159, 163, 230. shop of his Dean and Chapter, the Abbot the Consent of his 311, 332, 405, Covent, the Parson the Consent of the Patron and Ordinary, 410,491, 499. Esse de cateris. As to 2. The Statute of 32 H. 8. half en- Larch. 45. larged the Power of the Bishop, for by this Act he may Bridgm. 28. make a Lease for 21 Years, or 3 Lives, with divers Limi- Moor 58, 759, tations. 1. That every old Lease be expired or surrender'd 783. within a Year, &c. 2. That the Land ought to be usually 148. demised to Farm by the Space of 20 Years, &c. and that the life.

Bishop alone may do by Deed indented, following the Limingtones 60.

2 Inst. 342,

As to the third and fourth Point, it was refolved, 681 That by the Act of 1 (c) El. the Bishops are gene pl. 119. rally restrained from making any Estate or Interest 3 Keb. 381. of any Land, Tenement or Hereditament Parcel (c)Co.Lit 49 of Bridgm. 29

5 Co. 2. b. 4.2. 271.pl.28.357

The Bishop of Salisbury's Cafe. PART X.

of their Bishopricks, or of any Charge or Incumbrance out of it, or of any other Thing in their Disposal to bind the Successor, but only a Lease for twenty-one Years or three Lives, of fuch Lands, Tenements and Hereditaments which have been usually demised, and upon which the usual Rent shall be reserved according to the said Act of 1 Eliz. And if they make a Lease of any Lands usually demised, and referve the usual Rent according to the Statute of 1 El, yet if all the Limitations prescribed by the Statute of 32 H, 8, be not pursued, as if it be not all in Possession, or that the oldLeafe be not expired or furrendred within a Year (which is not prohibited by the Statute of r El. as it was adjudged in Fox's Case) then such Lease shall not bind the Successor, unless it be confirmed by the Dean and Chapter, for the Statute of I El. doth not enable any Archbishop or Bishop only to make any Leafe. And fuch Construction has been made as is aforesaid, to disable the Bishop to do any Thing. except to make Leafes for twenty-one Years or three Lives (as is aforelaid) concerning the Bishoprick to bind his Succeffor; as the Grant of the next Avoidance by the Bishop of a Benefice to another, altho' it be confirmed by the Dean and Chapter, is restrained by the Statute of 1 El to bind his Successor, as it has oftentimes been adjudged, because it was such an Hereditament upon which a Rent can't be referved: For all that which is not permitted by the Exception, so. Other than, &c. is restrained as to the Succesfor by the general Purview of the Act. But such grant shall bind the Bishop himself, notwithstanding the Statute fays it shall be void to all Intents, Constructions and Purposes; for the Makers of the Act intended not only the Advancement of Religion, when the Profesiors of Divinity should have duplicem honorem, sc. bonorem reverentie, and bonorem beneficentie; but also the Increase of good Hospitality, and avoiding of Dilapidations and the Ruin of the Church, which the Successor, if the Acts of his Predecesfor should bind him, would not be able to rebuild or repair: And therefore the Makers of the Act regarded the Succeifion, more than the Bp. himfelf. Vide Elmer's Case in the fifth Part of my Reports, fo. 2. a. and Jewel's Case, ib. fo. 3. a. the Case of Ecclesiastical Persons, ibid. fo. 14. a. b. 15. and Eitrue's Case, and divers other Cases upon the Stat. of 13 El, cap. 10 concerning Deans and Chapters, &c. which Statute is Coufin German to this Act of 1 El. And these Words in the Act of 1. Parcel of the Possessions of his Archbishop. or Bi-Shoprick, or united, belonging or appertaining to the said Archbishoprick or Bishoprick, and it may be well and proper-

ly faid, That the Gift and Disposal of this Office, and all

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Co. Lir. 45.2, Degge 111.

Bridg. 10. Moor 150. 1 And. 65. pl. 140.

Ca. Lit. 44. b.

Co. Lit. 47. a.

Ant. fol. 59. a.

Me 1253.

2 Ral. Rep. 169.

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other the like, are belonging to the Archbishop, or Bishoprick: For altho' the Bishop himself can't exercise such (a) (a) 8 Co.55.b. Office, yet he has an Inheritance in the Gift and Disposal Bridgm. 30. thereof, as it is held in Roger Earl of Rutland's Case in the 1 H 7. 29. b. eighth Part of my Reports f. 55. b. And these Words (b) Br Prærog.125. belonging to the Archbishoprick on Bishoprick, shall be ta- 10 H. 7.18. b. ken for, concerning the Archbishoprick or Bishoprick : And ritz. grant 32. therefore if a Writ of (c) Annuity be brought against a Bi- Plowd. 381. 2. shop upon the Title of Prescription or otherwise, and Judg- (6) Bridgm.30. ment be given against him upon Verdict or Confession, it is Ley 78. restrained by this Act, because the Bishop is charged with (c)s the Annuity in respect of his Bishoprick, and therefore the Bridgman 30. Successor shall be charged with the Arrearages incurred in 11 Co. 69. b. the Life of the Predecessor, as it is agreed in (d) 21 H. 7. 1Rol. Rep. 152; 4. a. b. 34 E. 3. Scire facias 153. 48 E. 3. 26. a. b. 22 H. 155, 158, 160, 6. 10. 33 H.6.44. and yet the Annuity is not issuing out of the Hob. 97. Bishoprick, as appears in (e) 10 H. 6. 10. b. & (f) 10 B. (d) Bridgm.30. 4. 10-6. But because it concerns the Bishoprick, and tends (f) Davis 5. b. to the (g) Diminution of the Revenues, and the impove- Br. scire facias rishing of Successors, it is restrained by the Statute of I El. 179.

Then to answer the Objection which has been made, Why Br. Annuity 36.

Ritz. Annu. 13. shall a Grant of the said Office to one only be good? As to (g) Ley 71, 73. that it was answered, and resolved by the Court, That if Bridgm. 301.

(b) the Office has been ancient and necessary, the Grant Co. Lit. 44.2. thereof with the ancient Fee is not any Diminution of the (b)Cr.Car.557Revenue, nor impoverishing of the Successor, and there-Bridgm. 30.
fore for Necessity such Grants are by Construction exempt(i) Bridgm. 30.
ed out of the general Restraint of this Act of 1. For as (k) Bacon's B-Bratton fays. fo. 247. a. (i) Illud quod alias licitum non eft, lements 25. necessitas facit licitum, & (k) necessitas inducit privilegium (l) Bridg. 31. quod jure privatur. And if Bishops should not have Pow- (m) Bridg. 30. er to grant such Offices of Service or Necessity for the Life (n) Cr. Car. 259. of the Grantees, but that their Estates should depend up- Bridgm. 31. on Incertainties, as upon the Death, Translation, &c. of the (a)Cr. Car. 279, Bp. then the most able Persons would not serve them in such 557.

Offices, or at least would not discharge their Office with a Bridgman 31.

ny (m) Alacrity, unless they have such Certainty of an E-(p) Dyer 80. b. state for the Term of their Lives, as their Predecessors in pl. 58,259 pl. 18. the same Offices had. But when the (n) ancient Office has 11 Co. 4, 2.

March Rep. 41. been granted to one, it is not of Necessity to grant it to two, Cr. Car. 279. and therefore such Grant is not exempted out of the 8 Co. 55. b. general Restraint, no more than if the Bishop grants an 2 Rol. 154. Office with the ancient Fee (0) to one, and afterwards Hob. 150, 151. grants it (p) in Reversion to another that is restained by 4 Inst. 202.

Cr. Car. 49. 1 Jones 264.

The Bishop of Salisbury's Case. PART X.

the Statute, because it is not of Necessity, and if the Bi-

(a) Bridg. 31.

(b) Bridg. 31.

Cr.Car 49.50. Co. Lit. 3. b. r Rol. 731.

Rol. 153. Bridgman 31.

Antea 59. 2.

Cart. 13, 16. 1 Vent. 247. 1 Rol. Rep. 152,

shop may grant such Offices to (a) two, he may grant them without any Limitation of Lives, and by Consequence in infimitis; and so if he may grant to one in (b) Reversion, he may grant to others without any Limitation; and by the fame Reason he may grant in Tail or in Fee, which will be intirely against the Intention of the said Act of 1 and of fuch Opinion was Popham Chief Justice, Mich. 44 & 45 (6) Cr. El. 636, Elis. in (c) Scambler's Cafe. Vide 23 Eliz. Dyer 370. (d) Horne Bishop of Winchester after the Statute I Eliz, granted to Doctor Dale for Life a Rent out of the Manor of Waltham pro confilio, &c. The Bishop died, Doctor Dale, because the Rent was void by the Death of the Grantor, brought an Action of Debt for the Arrearages Ley 74, 76. (d) Cr.Car.49. Bridgman 31. Dy.370.pl,62. (e) Co.Lit.45.a. incurred in his Life against his Executors: In which two Points are to be observed. 1. That the Grant was not void against the Bishop (e) himself; the other, That although the Rent was issuing out of the Possessions, and not Cr.El.473,564. Parcel, it was void by his Death. Trin. 30 Eliz. Rot. 346. 60. b. 3 Keb. 109. 1 ModRep. 205. in this Court, the Bishop of Chester after the Statute of I granted to George (f) Bolton an Annuity of five Marks per Annum for his Life pro consilio impenso & impendendo, which was confirmed by the Dean and Chapter, and afterwards the Bishop died, Bolton brought a Writ of Annuity 154, 159, 169. (f) Cr. Car.49. Bridgman 31. against the Successor, and in his Declaration averred, That the Predeceffors of the Bishop had granted reasonable Fees Ley 72, 73, 75. Hard. 354 (g) (but did not aver that this Fee had been granted be-(g) Bridgm. 31. fore) and averred, that he was homo confiliarius & in lege (b) Bridgm. 31. peritus, and the Opinion of the Court was against the Co. Lit. 94. 2. Plaintiff, and therefore he never had Judgment. But there it was refolved, That although the faid Bishoprick was (b) founded of late Time, sc. in the Time of H. 8. yet a Grant of Offices of Necessity to one in Possession with a rea-(i) Bridgm. 31. fonable Fee (i) (the Reasonableness of which shall be decided by the Court of Justice in which it shall depend) is Cr.Car.43,196. good, and as has been faid, exempted out of the general Restraint of the said Act. And the Court took no 2 Rol. 578.

1 Rol. Rep. 33. regard to that, that it did not appear, when Edward Green Cr.El.351,779. one of the Grantees died: For admit he died in the Life of the faid Bishop, so that now against the Successor one only has the Office; yet the Grant by Force of the faid Act de primo is void as to the Successors, quia que

19.b. 1 Rol. 523. Moor 623. 4 Co. 27. b. 11 Co.44. a. 13 Co. 3. 1 Brownl. 186, i-

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malo (a) inchoata funt principio, vix est ut bono pera (a) 4 Co. 2. b. gantur exitu, & (b) quod initio non valet, tractu temporis 11 Co. 78. 2. non convalescit; and the Statute de primo Regine Eliz. 2 Bul. 43, 19: has at the Time of the Grant adjudged it void as to (b) 4 Co. 2. b. the Successor, which no subsequent Accident can make 90. 2.
good, no more than if a Bishop makes a Lease for 1 Co. 135. b. four Lives, and one dies in his Life-time, so that now Davis 32.2 there are but three Lives, and afterwards he dies, yet it shall not bind the Successor, although all other Circumstances required by the Statute of 32 H. 8. be observed.

5. It was resolved, That the Grant of any ancient Office to one with the ancient Fee by a Bishop, shall not bind his Successor, unless it be confirmed by the Dean and Chapter, for such Grants are not, as appears before, restrained by the Statute de primo El. and therefore remain at the Common Law, and by Consequence ought to be confirmed by the Dean and Chapter.

Also no Regard was had by the Court, That it did not appear that John the Bishop was dead; for (c) nuper Epis- (e) 1 Rol. Rep copus may imply a Translation, or other Removal, as well as 50. Death, but it is all one; for be he translated, deposed, or Cr. Car. 401. otherwise removed, the Grant is void against the Suc-Doct.plac.247.

Lastly, altho' it doth not appear, that there was any Successor at the Time of the Distress for posito there was no Successor then made) yet that is not material; for the Grant determin'd by the Death or Removal of the faid John the Bishop. And afterwards this Term, Judgment was given for the Plaintiff Simon Stanton and Henry Knap, and against the said John Green who claimed the faid Office.

Note Reader, The Subject of this Case is small, but the Consequence great: And where by Force of an Exception in the Statute de primo Regine Eliz. any Archbishop or Bishop might with the Consent of the Dean and Chapter convey any of their Poffessions to the King, his Heirs and Successors, of any Estate whatsoever; our (d I.ord the (d) 1 Jac. c. 3. King that now is, of his Piety and Devotion to Religion, Co. Lit .44. a. and for the Honour of it, and that fuch Poffessions which were given by his noble Progenitors Kings of England, should not be converted to private Uses, has at his first Parliament, and by Authority thereof, restrained them from making any Conveyance or Estate, either to himself, or to any of his Heirs and Successors.

The Bishop of Salisbury's Case. PART X.

And so you will understand what Acts an Archbishop or Bishop may do concerning his Possessions without the Affent of the Dean and Chapter; and what he may do with the Dean and Chapter; although they be with the Affent of the Dean and Chapter, Stand - god let of the agent season and eds the gas worst rain at conference bas service in

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Whiftler's Cafe.

IN a Quare Impedit by John Whiftler Gent. Plaintiff, and John Bishop of Oxford, and Isaac Singleton Clerk Defendants, for the Church of Whitechurch in the County of Oxford: The Case on the special Verdict was such 3 (a) 2 Roll Q (a) Elizabeth was seised of the Manor of Whitechurch, Rep. 279. to which the Advowlon of the Church of Whitechurch was appendant in herDemein as of Fee as inRight of herCrown, and to feifed 24 Aprilis Anno 9 Eliz. by her Letters Patent demiled the faid Manor with the Appurtenances to William Smith, except Advowlens of Churches, &c. for 21 Years; and afterwards the Queen 22 die Maii Anno Regnifui 27, reciting the faid Demile of the faid Manor to the faid Wm. Smith, with the Exception of the Advowson, made another Demise in Reversion to the said Wm. Smith of the faid Manor with the Appurtenances, except the Advowson, and afterwards Queen Elizabeth died; and the King that now is, in Confideration of Service, at ex certa sciencia & mero motu, granted to Sir Geo. Howme Knight, (b) 2 Rol. (b) totum illud manerium sive dominium de Whitechurch in Rep. 279. Com' nostro Oxon' cum suis juribus, membris, & pertin' universis, ac omnia & singula domos, adificia, &c. & bereditamenta nostra quacunque predicto manerio sive dominio de Whitechurch sive alicui inde parcelle quoquo modo specian five pertinen cuidam Willielmo Smith per literas patentes dicte nuper Reg' Eliz' sub magno sigillo suo Anglie pro termino 21 annor' (c) exceptis que in cisdem literis paten- (c) 2 Rol, tibus excipiuntur, mentionat fore dimiss' ac postea per ali- Rep. 361. as patentes, and mentioned the Lesse in Reversion, and in which is also the like Clause, Exceptis que in eisdem literis patentibus excipiuntur, mentionai fore

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dimissa. Ac ulterius de uberiori gratia nostra speciali, ac ex certa scientia & mero motu nostris, damus & concedimus prafato Georgio Howme Militi baredibus & assignatis suis imperpetuum omnia & singula mestuagia, &c. tenementa predicto manerio sive dominio de Whitechurch quoquo modo 2Rol.Rep 280. Spectan' sive pertin', &c. Damus ulterius, & per prasentes pro nobis haredibus & successoribus nostris concedimus prafai' Georgio Howme Militi hæredibus & assignatis suis imperpetuum prædictum manerium sive dominium de Whitechurch, ac catera omnia & singula pramissa superius per prasentes concessa cum eorum pertin universis adeo plene & integre, & in tam amplis modo & forma prout ea omnia & singula præmissa aut aliqua inde parcella ad manus nostras,

&c. devenerunt, ac in manibus nostris jam existunt.

rog. 41.b. I Co. 50. 2. 2 R. 3, 4.b. 41 E. 3. 5. b. Plow. 252. 2. 17 E. 2. c. 15. 8 H. 7. 2. 2.

(b) Moor 881. Hob. 170.

(c) Hob. 170. Moor 881.

And if the Advowson appendant to the said Manor of Whitechurch should pass by these Letters Patent, or not, was the Question. And divers Objections were made at Bar that the Advowson should not pass. 1. Because no express Mention was made of the Advowson, and it is enacted (a) Stamf. Prz- by the Statute de Prerogativa Regis, Cap. (a) 15. Quando Dom'Rex dat vel concedit alicui manerium vel terram cum pertin', nisi faciat in charta sua vel scripto expressam men-tionem de feodis militum, advocationibus ecclesiarum & dotibus cum acciderint, ad pradict' manerium vel terram pertin', tunc biis diebus Rex reservat sibi eadem feoda & advo-cat' cum dotibus, licet inter alias personas non fuerint obser-38 H. 6. 34. b. varq. And in this Case the King made no express Mention of the Advowson. The 2d Reason was, That when the King first granted the Manor of Whitechurch, (b) cum pertin', without making Mention of the Advowson, it is as much in Judgment of Law, as if the Advowson had been excepted in express Words, and then when by the later Clause the King granted pred' manerium cum pertin' ac catera omnia & singula pramissa superius per præsentes concessa cum eorum pertin' universis, (c) adeo plene & integre, Esc. this Word (pradict') has Reference to the Manor mentioned before, which Manor was granted without the Advowson, and therefore this Clause being restrained by this Word (predict) and by these Words (& catera omnia & singula pramissa superius per prasentes concessa) the Advowfon shall not pass: And yet peradventure (as it was said) if in one and the same Clause the King had granted totum manerium nostrum de Whitechurch in Com' nostro Oxon adeo plene & integre, & in tam amplis modo & forma prom idem manerium ad manus nostras devenit & modo in ma nibus nostris existit, it might pass. 3. It was objected, That the original Grant is restrained by this Word (illud) manerium, and by these subsequent Words cuidam

ob. 170.

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enidam Willielmo Smith per literas patentes, exceptis que in eisdem literis patentibus excipiuntur, mentionat foredimiffa & concessa; in which Demise to Smith the Advowson was expresly excepted, and so upon the Matter by this Reference the Advowson is excepted out of this grant. The 4. Objection was, That these Words (exceptis que in eisdemliteris patentibus excipiuntur) should be an Exception out of this grant of the King that now is, and then against the express Exception, the general Words afterwards should not pass it; for Conftruction ought to be made upon the whole Letters Pa-

tent, that one Part may fland with the other.

To which it was answered and resolved by the Court, That (a) 9 Co. 30.2 when the (a) King's Charter in general Terms refers to a 4 Certainty, it contains as express mention, as if the Certainty 2Rol 185,2011 had been expressed in the same Charter, altho' the Certainty to which the Reference is, be not of Record, but lies in Averment by matter in Pais or in Fact. And first it was confidered, what the Law was in this Case before the Statute de Prerogativa Regis, and it was agreed, That before that Statute, If the King had granted a Manor to which an Advowfon was appendant, without making mention of the Advowfon, or without saying (b) cum pertin, that the Advowson (b) 39E.3.21.b. should pass, and so is the Book adjudged in (c) 43 E. 3. 22. Perk. sect. 116. o. That where the Earl Marshal was seised of the Manor of A. Co. Litt. 77. a. to which an Advowson was appendant, and gave the said Ma- 307. a. nor to K. H. 3. to him and his Heirs, for which Gift the King Doct. and Stud. granted to him and his Heirs 50 Marks per ann. till he infeof- 35. a. fed him of fo much Land, as fully and entirely as he had the (c)Stam. Præro. Manor of A. of his Gift, and afterwards K. H. 3. gave the faid Br. Patent 6. Manor of A. to which the Advowson is appendant, without say- 1 Jones 23. ing cum pertin', to the said Earl Marshal and his Heirs for the Br. Prærog. 7. fame fifty Marks, and because the Manor was more worth by Cs. rendered Cs. per ann. &c. And altho' the Charter of K. H. 3. spoke nothing de pertin', nor of his Fees, nor of Advowsons, yet it was adjudged that the Advowson should pass; and Mowbray Ch. Just. said, altho' K. H.3. had given the Manor without faying (d) cum pertin', at which Time the Advow- (d) Co. Lit. fon passed by the K.'s Gift, as by the Gift of another common 307. 2.77. Person, and all Times before the Stat. de Prero'Regis, which Stat. was in the Time of the Grandfather of the K. that now is: So that at all Times before the Advowson past by such Gift; wherefore Judgm. was given, That by the faid Grant of K. H. 3. of the Manor, the Advowson should pass; and so there it is held, That before the faid Stat. by the K.'s Grant of a Manor, the Tenure by Escuage shall pass, and all this is proved by the Act it felf, which Act has altered the Com. Law; for the Words of it are, Tunc hiis diebus rex reservat sibi ead' Jeoda & advocation' Ecclesia, &c. and the Book says so it is proved by the Words (hiis diebus) began the Prerogative:

(a) 2 Rol. 60.

And therewith agrees 44 E. 3. 20. That by Feoffment of the Manor by the Com. Law, without faying (a) cum pertin, the Advowson shall pass; and altho' the Feoffment be by Word, the Advowson shall pass: And therewith agrees the Book in 39 E. 3. 21. b. that before this Statute the Advowson shall pass. Vide 19 E. 2. Brief 844. 8 H. 7. 4. a. b. 18 E. 3. 15. And it is to be observed, That the Act de Prerog. Reg. restrains but the said three Cases, st. Advowsons, Knights Service and Endowment of Women. For a Leet shall pale without express Mention, or Words equipollent, as it is held 18 H. 6.12. fo a Forest appendant to an Honour shall pass, as it is agreed in (b) 26 Aff. p. 60. the same Law of a Corrody appendant to the Patronage of a Priory, as appears in 26 Aff. p.63.8 Sic de similibus. Allo the Words of this Act are, Quando Dominus Rex dat vel concedit, and therefore in Cafe of (c) Fitz. Livery (c) Restitution, Advowsons and Knights Service, shall pass

(b) Br. Incidents 11. Br. Patent 35.

Co. Lit. 77. 8. Br. Livery 45. Plowd. 252. 2. F.N.B.33.N.O. Br. Patent

(d) Dy. 360. pl. 5. Co. Lit. 77. 2. (e) Hob. 323. (e) Hob. 3. Moor 872.

without express Mention of 'em, or Words equivalent as in Livery to Heirs. 2. In Restitution of the Temporalities to the Successor of a Bp. end the like. 41 E. 3. 5. b. 27 All. 40. Plo. Com. the L. Berkley's Cafe. 251,252.20 El. Dy. (d) 306. But there Thorp Ch. Just. fays in the same Plea, That if a Manor to which an (e) Advowson is appendent be in the King's Hands by Escheat or by Purchase, if the King at this Day (after the faid Act de Prerog. Reg') gives the Manor to a Man as intirely as fuch a one held it before it came to our Hands by way of Escheat; or as such a one held it who enfeoffed us, that the Advowfon would pass without saying in the Charter cum feodis & advocationibus; and the Reason is, because the Law intends that in such Case the King is informed of his Right: Quod curia concessit. By which it is to be obferved, 1. That altho' the Reference in the King's Charter be to matter in pais or in Fact, that if the Truth be, that the Advowson be appendant that it shall pass, for in Judgm. of Law it is equivalent to an express mention of the Advows (as the Stat. speaks) in the Charter. 2. Although the King grants the Manor only without faying cum pertin' (f) as engrees 6 E. 3. 32. a. John Darcie's Cafe, That if a Man has Manor to which an Advowion is appendent, and Franchife w have Forfeitures and other Franchifes within the Manor, and afterwards the Manor comes to the King by Forfeiture of War, and afterwards the King gives the Manor of hold with the Franchises which were always regardant to the said Manor as such a one held, he shall have the Franchiles; and there Sir William Here That it shall be a new Grant, for the Fran chifes (which lay in Point of Charter) were come to the Crown. In which first it is to be observed, That

(f) Hob. 323. Cro. 25. b. Dy. 44. pl. 32.

Man has a Manor, in which Manor the Owners thereof we Franchises which lie in Point of Charter, as Forfeiires for Treason, and other Royal Franchises; and afterards the Manor with the Franchifes comes to the King's lands, and the King grants the Manor with the Forfeit ires of Treason and other Franchises which were regardant appertaining to the faid Manor as fuch a one held, That I the Franchises should pass, and these Words which were gardant or appertaining to the faid Manor shall be taken this Sense, which were lawfully enjoyed within the said sanor, as entirely as such a one had them; and yet accord- 9 Co. 27: 1. g to the strict Propriety of the Words, such Franchises ald not be appertaining to the Manor. But fuch Conruction as will make the true Intention of the King expref- 8 Co. 77. a. d in his Charter take Effect, is for the King's Honour, nd stands with the Rules of Law: And therefore this ford (appertaining) shall in fuch Case in the King's Grant taken out of the proper Signification. 2. It is to be obrved, that in the same Case such Franchises which lie in oint of Charter shall pass as by a new Grant, a fortiori Fran- 9 Co. 26. 2. sifes appendant or appertaining to a Manor, as Advowsons, airs, Markets, Warrens, &c. (which always continue in e, and are never extinct in the Crown) shall pass. It is id in Plo. Com. in Fogassa's Cafe. 12. b. If the King at this sy grants over certain Lands which have come to his ands before, and further grants to the Grantee tales liber(a) 9Co. 24. b.
tes, privilegia, furificationes, &c. that he had, who was 9 H. 6. 27. a. b.
ft seised of the Lands, where the King knows not the Firz. Grants 7. ertainty of the Liberties and Privileges, yet the Grant is Br Patent 4,60. Br Patent 4,60. Dod enough, and the Patentee may enquire what Liberties 5 E. 4.8. b. 1 And Privileges the other had before; and forafmuch as this 21 H. 6. 43. and certainty may be reduced to a Certainty by Enquiry or Br. Estate 44. Plow. 381. b. ircumstance, the Grant is good. V. the Case de Strata Mar-Br. Contract ella in the ninth Part of my Reports f. 24. b. 18 El. Dyer 13.) 350, 351. hereafter cited.

As to the 2d Objection, It was answered and resolved, 2 Rol. 185. That it is true, That if the said Clause of (c) adeo plene & in- 1 Jones 23.

gre had been omitted, &c. that then the Advowson had not Poste 56. b. affed by the first Clause, but by the Addition of the later (c) Hob. 170, laufe, all the Parts of the Letters Patent taking Effect at ne and the same Time, the Advowson should pass as apendant: And this Word (predict') doth not restrain the assing of the Advowson, but describes what Manor it is, nd then the Addition of these Words (adeo plene & ntegre & in tam amplis modo & forma) express the King's Intention to pals it as intirely as the Manor ame to his Hands, or otherwise the said Words adeo plene, sc. would not take their right and genuine Effect: and it was never feen in any Letters Patent, that the

2 Rol. 185. Winch 11. Lit. Rep. 62. Ant 65. 2.

faid Words, adeo plene & integre, &c. came in the first Clause of the Grant, but is a new Clause by it felf; and then in the last Clause, this Word (predict) is always added, and so in Truth was the Case in 18 Eliza Dyer 350, 351. For it appears by the Letters Patent of Queen Elizabeth mentioned in the faid Cale, That the Rectory of Westbodwin, to which the Advowson of the Vicarage was appendant, came to the King by the Attainder of E. for Felony, and was concealed, Queen Elizabeth granted totam illam Rectoriam de W. in Com' Wilts. cum quis juribus, membris & pertin' universis, nec non omnia & fingula mesuagia, &c. & bereditamensa parcell' Spettan five pertin' dicta Rectorie: Et ulterius, &c. Concessimus prad Rectoriam cum pertin' ceteraque premissa cum pertin' adeo plene E integre & in tam amplis modo & forma, quantitate & qualitate prout, &c. the Pelon had it, and as it came to her Hands: And it was adjudged that the Advowson should pass without express or special Mention; also the Words were ex certa scientia & mero motu, and so the Queen was not deceived: Which being a Judgment in the Point confonant to the Resolutions in ancient Time, and agreeing with common Experience and Opinions of learned Men, this was not worthy any Question. And thereupon it was concluded. That if the King has the Manor of D. in the County of Northumberland, and some of the Rents and Services extend into Cumberland, and the King grants the Manor of D. in the County of Northumberland, & omnia & singula mesuagia, &c. redditus, servitia, & heredimenta in dicto Comitatu Northumberland seu alibi parcell pradicti manerii, &c. That the Rents and Services in the County of Cumberland shall pass; for (pradict) is but a Description of the Manor, and these Words (aut alibi) ought to have some Effect. And therefore in as much as in luch Case all Parts of the Charter take Effect at one Time, these Words (aut alibi) shall be in Judgment of Law annexed to the first Clause, and shall be of such Effect as if the King had granted the Manor of D. and all Rents and Services, Parcel of the faid Manor in the County of N. aut alibi, and that stands with the Rule of good Construction, sc. to make all the Words of the Letters Patent, according to the true Intention of the King expressed in them, take Effect. As to the third Objection, Although the first Clause of the Grant refers to the Demise in this sudgment, which the Advowson is excepted, yet by the middle Claufe all Tenements, &c. appertaining to the Madetermined by nor are granted; and the last Clause grants the Manor

A Writ of Error was brought on and the Suit was afterwards Compromise.

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with the Appurtenances, &c. adeo plene & integre, so that the Answer to the second Objection, satisfies this also. As to the fourth Objection, it was resolved without any Difficulty, that the Exception should be extended only to Leases recited, and not to be any Exception out of the Letters Patent of the Fee-simple. And accordingly Judgment was given that the Advowson should pass.

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Trin. 11 Jac. Regis.

The Case of the Church-wardens of S. Saviour in Southwark.

IN an Information of Intrusion preferred in the Court of Exchequer by the King's Attorney General, which is entred Hill. 5 Jac. Regis Rot. 121. against Thomas Harvy, John Marshal, Abraham Grene, and others, for intruding into the Rectory of the Parish-Church of S. Saviour in the County of Surry, 9 Oct. Anno 3. Regni Regis Jac. &c. Upon Not guilty pleaded, the Jury gave a special Verdict to this Effect: That Queen Elizabeth was seised of the faid Rectory in her Demesn as of Fee in Right of her Crown, and by her Letters Patent bearing Date 22 Febr. Anno Regni sui 27. demised to the Church-wardens of the Parish of S. Saviour in Southwark (who by such Name were incorporated by Act of Parliament in Anno 32 H. 8. and so found) the faid Rectory from the Feast of St. Michael then last past for twenty one Years, by Force where of they entred, and were thereof possessed; and afterwards the faid Queen by her other Letters Patent bearing Date the 28 Novemb. Anno Regni sui 33. reciting the said Lease, per prædictas literas patentes port' dat' 22 Febr. Anno dicta nuper Reg' 27. confest : Quas quidem literas paten-tes, & totum statum, titulum, interesse, terminum an-norum adbuc futur de & in pramissis, dilecti subdit nostri Thomas Norton, &c. gardiani dicta Ecclesie parochialis modo habentes, & ad prasens postdentes nobis sursum reddiderunt & restituerunt cancelland', quam quidem sursum redditionem acceptamus per

prasentes; sciatis igitur quod nos ad humilem petitionem gardianorum & parochianorum dicte Ecclesia sanct' Salvatoris de Southwark, tam in consideratione sursum redditionis prad quam in consideratione quod prad nuper gardiani Eccl parochial pred post datum dictarum nostrarum literarum patentium superius mentionat, unam sufficientem domum aptam & convenientem pro Schola Grammaticali ibid' tenend' infra paroch' sancti Salvatoris pred pro eruditione puerorum ejusa' paroch' sumptibus eorum & expensis erexerunt & adificaverunt, necnon pro fine 201. legalis moneta Angl ad recept' Scaccarii nost ad usum nostr' per prasatos modo gardianos solut', demised the said Rectory to the said Tho. Norton, &c. now Wardens of the faid Church, from the Feast of the Annunciation of our Lady then last past for the Term of 50 Years; and further found, that the faid Wardens at the Time of the Making of the faid Leafe for 50 Years, surrendred and yielded up the said Letters Patent of 27 El. to be cancelled, and then paid to the Officers of the Court of Chancery the Fees due for cancelling them, and making a Vacat of the Enrollment of them; and that they then were possessed of the Residue of the said Term of 21 Years, but no Vacat was made of the faid Enrolm. of the faid Letters Patent; and that the Defendants and others being Wardens, had entred into the faid Rectory by Force of this later Lease prad' tempore quo; and if the Entry of the faid Defendants as Wardens was lawful or not, was the Question. And this Case was often argued at the Bar in fundry several Terms, and now this Term it was argued by Sir Ed. Bromley, Sir James Altham, and Sir Geo. Snigge, Barons of the Exchequer, and Sir Lau, Tanfield Ch, Baron: And in this Case 3 Points were resolved. First, That an actual Surrender was not necessary in this Case, because these Words, modo babentes & ad presens possidentes, &c. prove, That at the Time of the Making of the faid Letters Patent, the faid Church-wardens had the faid Term for Years in them; and therefore it expresly appears, that the King's Intention was not that they should make any (a) Surrender (a' Hob. 204 before the Parent, but that by Acceptance of the Letters 2 Rol Rep. 406. Patent, they having the Term then in them, their Estate for Years should be surrendred, And where the Words are sursum reddiderunt, & restituerunt, &c. in the Preterperfect Tense, it is to be observed, That the Words are, modo habentes & ad prasens possidentes sursum reddiderunt 5 restituerunt, &c. which is true in Construction of Law: For in Judgment of Law the Surrender (b) pre- (b) 1 Jon. 26, tedes the new Leafe; and in many Cases the Preterfeet Tense is put for the Present Tense, as Dedimus & C023-K 3

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The Cafe of the Church wardens PART X.

(a)11Co.79 2. Concessimus, pro Damus & Concessimus, &c. To which Br. Tresp. 288. Surrender in Law the King express we worked Br. Tresp. 288.
Br. Corp. 47.50
Br. Corp. 47.50
Words, quam quidem furfum redditionem acceptamus;
6.b 16H.7.2.b. and the King is not deceived thereby, nor prejudiced in 7H.7.16 b.26H.
Br. Effete, Interest, Value or Remedy, and although the 8.8.b.B. Baily 1.
12 H. 7. 26. b.
Co. Lit. 318. (b)Co.Lit.338, not make an express Surrender (n) without Deed in a.6Co.64.a.69. Writing under their Seal; yet they might by Act in Law b.8 Co.152. a. Surrender their Term without Writing, for (b) forcior & Law 12.00.Rep.315. 12 H. 7. 26. b. (6)Co. Lit. 338. 2.6Co.64.2.69. potentior est dispositio legis quam bominis, as in 37 H. 8.

16. If a Man has inveresse vermini pro termino annorum to begin at Michaelmas, he can't expressly Surrender this Interest; but if he takes a new Lease for Years, this this Interest; 1 Sid. 59. (c)Co.Lit.218. b. 338.2.2Rol. 496.5Co.11.b. Acceptance is a (c) Surrender in Law of the first Leafe. 874. Ant. 52.b. So if a Prior with the Confent of his Covent makes 874. Ant. 52.b. a Leafe for Years rendring Rent; if the Prior by 2 Leon. 188. Deed expresty releases the Rent and dies, the Suc3 Leon. 247. ceffor shall recover the Arrearages: But if the Prior had outled the Leffee and died, this Discharge in Law should 358, 636, 637. discharge the Rent which incurred during the Ouster a-2 And 52.192. Dy. 46.pl. 9.112 gainst the Successor, as it appears in 34 H. 6. 21. 74. Moor 196,

Hutt. 18.

And this Construction and no other stands with the pl. 49. 140. pl. And this Conftruction and no other mands with the pl. 49. 140. pl. And this Conftruction and no other mands with the pl. 49. 177. pl. 35. Words and Intention of the faid Letters Patent, But if pl. 13,849 pl. 15. (d) two Conftructions may be made of the King's Grant,
Pork fect. 617. then the Rule is, when it may be recorded to the King's Grant,
Latt 8 162 B. then the Rule is, when it may receive two Confiructions, and by Force of one Construct, the Grant may according to the Rule of Law be adjudg'd good, and by another it shall by Law be adjudged void: Then for the K.'s Honour, and for the Be-14H.8.15.2.Br. Lease 14. 2Rol. Rep. 171, 406. Lane 7. Lit. nefit of the Subject, fuch Construction shall be made, that the Rep. 273, 282. 6Co.69.b.37H. K.'s Charter shall take Effect, for twas nor the K.'s Intent to b. 194. b.Br. Sur- make a void Grant; and therewith agrees Sir (e) J. Molini's render 14.35. Cafe in the 6th Part of my Reports. 52. It was refolved, That 2Co.17.b.7Co.

38. a. Ray.148. the (f) Delivery made by the Wardens of the faid Letters

O. Benl. 57. Patent in Chancery to be cancelled, &c. (which was Part Cafe in the 6th Part of my Reports. 32. It was refolved, That Kel. 70.b.21H. of the Confideration) by their Hands without Writing, 7.5.2 b.Br. Eftopel 210. 2 Sid. was sufficient, and as much as they ought to do; and it belongs to the Lord Chanceller or his Officers to have \$60.96.2.167.2. cancelled them, and every one ought to do what be77 a.Kel.175.2. longs to him to do. J. It was resolved, (g) That it was
77 a.Kel.175.2. longs to him to do. J. It was resolved, (g) That it was
198. a. 3 Leon. not necessary to find the Payment of the said twenty
198. a. 3 Leon. not necessary to find the Payment of the said twenty
28.01.200.Plo.
Pounds, which was one of the (b) Considerations of the
28.01.200.Plo.
32.3.126 a.143. Lease; for that is but a Sum of Money in the Per32.3.126 a.143. Icase; for that is but a Sum of Money in the Per32.3.126 a.143. Consideration executed by the King to be paid and said in Time before the Patent, and so a personal
160.49 a.2R.3, Consideration executed; and therewith expressly agrees
4. a.b. 37 H. 8. Br. Patents 4. belongs to the Lord Chancellor or his Officers to have

4. a. b.
(c) 2Rol. 200.
Note, Reader, I have feen divers other Letters Patent
(c) 2Rol. 200.
(d) 2Rol. 200.
(e) 2Rol. 200.
(e) 2Rol. 200.
(e) 2Rol. 200.
(f) 2Rol. 200. 6, 2 Inft. 497. (f) 2 Rol. 199. (g) 2 Rol. 206. (b) Hob. 222. Plow. 455. 2. 5 Co. 94.2.

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nt . 2. de made upon like Confideration, and having such Words, (a) 5 Co. 93. b. modo habens & possidens, and no actual Surrender was ever Moor 393. made in any of them. Vide (a) Berwick's Case in the fifth 2Rol, Rep. 273.

Part of my Reports f. 93, 94. Vide the Case of Altonwood Davis 40.
in the first Part of my Reports, betwixt which and the Hob. 204.
Case at Bar the Difference appears.

Stiles 189.

Stiles 189. Hard. 499: Lane II.

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Mich. 10 Jacobi Regis.

The Case of the Marshalsea.

Inft, 130. 1 Bulftr. 207.

1 Brownl. 199. Richard Hall brought an Action of Trespass of Assault, 2 Brownl. 124. Restery, Wounding and Fasse Imprisonment against 2 Inst. 462,548. William Stanley, William Richardson, and Roger Cante, That they I Jan. anno 7 Jac. Regis, did affault, beat, wound and imprison, and in Prison detain for the Space of three Months, &c. The Defendants as to all the Trespass, but the Affault and Imprisonment, and Keeping of him in Prison, pleaded Not guilty, and as to the said Assault and Imprisonment, &c. the said William Stanley and William liam Richardson said, Quod Curia Dom. Regis vocat. Curia Marischalcie Hospitii Dom. Regis, est antiqua Curia affius Dom. Regis & progenitorum suorum Regum Anglie, & quod eadem Curia tenetur, & a tempore cujus contrar. memoria bominum non existit tenebatur, & teneri consuevit infra virgam, &c. coram seneschallo Curiæ Marischalcie & Marischallo hospitii Dom. Regis pro tempore existen, and that the same Court from Time whereof, &c. had Turisdiction to hold Pleas of Trespass, and Trespass on the Case, infra Hospitium pred. & infra Virgam ejusdem Hof pitii fact, and by all the faid Time within the faid Court there were tam quidam Marifeall' Marifebalcie bospitii pred. quam quidam Officiarii of the Staff, infra virgam bospitii dicti Dom. Regis, qui quidem Marischall. Maris chalcie bospitii pred. & Officiarii of the Staff, pro tempare existen. sunt & per totum idem tempus fuerunt Officie rii & Ministri Cur. præd. & guod omnia brevia & pra cepta ejusdem Cur. dirigenda sunt, & per totum tempul præd. direct. & dirigi usitat. fuerunt eidem Manischall Marischalcie, quod ipse idem Marischall' Marischalcie per s & prad. Officiarii of the Staff, & per ejus mandat. ore tenti

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fall, babent & a toto tempore supradict. babuer. & babers consuever. executionem & retorn, omnium & omnimodorum brevium, præcept. & warrant. quorumcung; a Curia pred. emanan. Marischallo Marischalciæ præd. direct; & iidem Williel, Williel. & Rogerus ulterius dicunt quod in Curia pred. babetur, & toto tempore supradicto babebatur talis consuetudo, viz. quod si aliqua persona existen. Def. in aliquo placito transgr. in eadem Curia penden. & in custodia Marischalli Mar. bospitii existen. fuit tradit. in ball', and prescrib'd to let the Defendant to Bail; and that the said Will. Richardson before the Trespass, and yet is Marshal of the Marshalfea of the Housh, and the said W. Stanley Officer of the Staff, and that the faid Roger Cante before the Trefpals, sc. 21 Jan. 5 Jac. Reg. in the said Court of Marshalsea of the Houshold, before Tho. Warre Esq; then Steward of the faid Court, and Tho. Vavafor Knt. then Marshal of the faid Houshold at Southwark within the County of Surry, within the Verge, &c. exhibited a Bill against one Thomas Ownstead then in the Custody of the Marshal of the Marshalfea of the said Houshold, of a Plea of Trespass upon the Case, and declared, That the said Tho. was indebted to the faid Roger in 80 1. for divers Sums of Money by the faid Tho. to the faid Roger due, and so being indebted to the said Tho. 1 Jan. 5 Jac. Reg. at Islington within the Verge, promised to pay the said Roger the said 801 upon Request. which he had not done, &c. Whereupon the laid Tho. was let to Bail, and the faid Rich. Hall and one Rich. Petty became his Bail: To which Declaration the faid Thomas Ownstead pleaded Non assumpsit, &c. which Issue was tried for the Pl', and Dam. and Costs affested, whereupon the Pl' in the same Court had Judgment, and the Pl. upon that Judgm. fued forth a Precept in the Nature of a Cap. against the said T. Ownstead directed to the Marshal of the Marshalfea of the Housh', who returned Non est inventus, whereapon the then Pl. sued forth a Precept in the Nature of a Cap', to take the Body of the said T. Ownstead, or of Rich. Hall and Rich. Petty, according to the Custom of the said Court ad satisfaciend, &c. directed to the Marshal of the Marsbalsea of the said Housh', by Force whereof the said Marshal of the Marshalsea ore tenus commanded the said Will. Stanley to execute the faid Writ, by Virtue whereof he arrested infra virgam, &c. the Body of the said Rich. Hall, and delivered him to the said William Richardson Marshal, Sc. in Execution, Sc. who detained him in the Prison of the Marshaffea at Southwark infra virgam in Execution, &c. The Plaintiff replied and said, quod nec pred. Rogerus Cante in placito pred. querens nec predict. Thomas Ownstead in placito predicto Def. tempore exhibitionis bilpradict, fuit servus seu servi dicti Domini Regis Jeu.

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feu de bespisio sus pred. existen', Sc. Upon which the Desendants did demur in Law. And this Case was often argued at the Bar, and two Points were moved. 1. Whether an Action upon the Cafe upon Assumpts for Payment of a Debt being made within the Verge, be within the Jurisdiction of the Court of Marshalfea. 2. Admitting that it be not, Then if the Defendants having the Warrant of the faid Court, shall be punished for a Falle Imprisonment, or not. And much was faid by them who were of Counsel with the Court of Marshalfea; for the Antiquity, Honour and Jurisdiction of the Court of Marshalfea: For the Antiquity, that it is as antient as any of the King's Courts, as appears in 4 H. 6. 8. 4. and Diverfity of Courts, Tit. Marbalfea; for the Honour, that Pleta, lib. 2. cap. 2. next after the High Court of Parliament, adds, Habet & Curiam fuam coram Seneschalle suo in aula sua, Sc. and Britton, cap. 1. which is in his Book in the Person of the King, begins with the Court of Marshalfea before any other, in these Words, And that the Marshal of Our Houshold hold our Place within the Verge, &c. And We Will, That the Earl of Norfolk by himself or by another Knight, be attendant to Us and Our Steward, to do Our Commands, and the Attachments and Executions of Our Judgments and of Our Steward through the Verge of Our Houshold, wherein twas also observed for the Honour of the Court, That the Judges hold the King's Place, and that a Man of such Dignity as the Earl of Norfolk, is attendant to the said Court; and they further said, That this Court was of so high Jurisdiction, that before the Statute of 5 E. 3. cap. 2. and to E. 3. cap. 2. That no Writ of Error lay of any Judgment there given, but in Parliament: And by the fame Statutes their Errors shall be examined and sedressed 6 Co.2.b. 21.2. in the King's Bench. And as it appears by Flets, This 3 Keb. 335. Court of antient Time, for the greater Honour thereof, 2 Inft. 547,548. was held in Aula Regis, within the Hall of the King's F. N. B. 241.b. honourable Houmold.

1 Bulftr. 208, 209, 210, 211, Cr. El. 502.

6 Co. 20. b.

The I Point.

And as to the Jurisdiction, they said, That before the Statute of Arrivali super Chartas, cap. 3. That the Court of Marshalfea had Jurisdiction within the Verge of Pleas of the Crown or criminal Causes, and of all common Pleas, real, personal and mixt, and that before the said Statute, the Steward and Marshal of the King's Houshold used to hold all the Pleas aforefaid within the Verge, altho' none of the Parties were of the King's Houshold, and now the faid Act has reftrained them to three Actions only, fc. Contracts, Covenants and Trespasses, and that in three di-

6Co.20.1.21.2. Stinet Manners, Jc. In Contracts and Covenants, when both F. N. B. 241. b. are of the Houshold. 2. In Trespass, when either Party n

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is of the Houshold, 3. Of other Trespasses done within the Verge, when neither of the Parties is of the Houshold, and that flands with the Words of the faid Act, fc. but only of Trespais of the Houshold, and of other Trespaires done within the Verge, and the Comracts and Covenants which any of the King's Houshould has made to another of the fame Houshold; fo that by express Words they have Power not only of Trespass of the Houthold, but also of other Trespasses within the Verge, and that the later Words, which any of the Houshold, &r. have made to another of the fame Houshold, thall have relation only to Contracts and Covenants, and not to the Clause concerning Trespattes, for then these Words (And of other Trespasses done within the Verge) are void, for it speaks first of Trespass of the Houshold, and then if the later Clause shall have Relation to the Claufe of Trespais, the same Claufe (And of other Trespasses done within the Verge) will be void, & glossa viperina est que corrodit vicera textus. And they strongly relied upon an Act of Parliament made within two Years after the faid Aft of 28 E. 1. Jt. anno (a) 30 E. 1. not printed, but re- (a) 6 Co.21.2. maining in the Treasury, which is a good Exposition of the faid former Act; by which it is enacted, That where before the Steward and Murshal, the Court being many Times near the City of London, Some Enquests are taken of Trefpaffes, and other Things done within the faid City, betwin some of the same City only, and betwixt them and Foreigners jointly, or betwixt Foreigners; and the Conusance of which Trespasses and other Things belongs to the Steward and Marshal by Reason of the Verge, that all such Enquests shall be taken within the City of London, and not elseshall be taken within the City of London, and not elfe-where; upon which it was inferred, That of all Trespasses done within the Verge betwixt what Persons soever, the Conulance belongs to the Steward and Marshal of the Houlhold, which is an Exposition by the High Court of Parisament, & (b) contemporanda expositio est fortissima in lege: (b) Cart. 20, So that as well before the Statute of 28 E. I. as by the 2 lost, II. Words of the fame Statute, and by the Act of 30 E. 1. the 4 Inft. 138. Steward and Marshal of the Houshold have Jurisdiction to determine all Pleas of Trefpass betwixt any Persons whatfoever. And they cited also the Statutes of 5 E. 3. cap. 2. and to E. 3. cap. 3. by which it appears, That the Court has Jurisdiction not only of Trespasses of the Houshold, but also of other Trespasses. And they held that this World [Trespass] shall be extended beneficially for the Jurisdiction of the faid Court, because their antient Jurisdiction was so much restrained by the faid Act, and therefore they conceived, That all Actions, the Entry whereof is in placito transgref. &c. Thall be within this Word [Trespals.] And there-

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fore Pleas of Ejectione firme, Trespass quare clausum fregit, of Goods taken away, Affault, Battery, Wounding, Trefpass upon the Case, upon Trover and Assumpsit, and other Trespasses upon the Case, shall be taken within this Word [Trespass] and the Jurisdiction thereof belongs to the Steward and Marshal of the Houshold. And they concluded, That infinite Precedents might be shewed at all Times after the Making of the faid Act of 28 E. 1. That they have held Pleas of Trespals, as well Trespals upon the Case as other within the Verge, altho' neither of the Parties was of the (a) 2 Co. 81.2. King's Houshold, (a) & optimus legum interpres consue.

Inft. 18.

The 2 Point Carter 19.

Antes 76.

tudo. And as to the other Point, admitting the Court had not Jurisdiction of the Cause, yet the Proceeding in it (being a Court of Record) is not void, but voidable by Writ of Er-Also the Marshal of the Marshalsea of the Houshold, and the Officer of the Staff, are Officers and Ministers of the Court, and it would be against Reason to punish them for executing the Precept and Warrant of the Court, when if they had refused, the Court would have punished them for their Disobedience, and therefore the Rule is, Quicung; justu judicis aliquid fecerit, non videtur dolo malo feciste, quia parere necesse est, and in 26 E. 3. 70. b. there it is taken for a Maxim, That the Thing which an Officer doth by Warrant or Command of a Court, can't be faid against the Peace: And Doct. & Stud. 150. the King's Officers are bound to execute the King's Writs at their Peril: And they cited and strongly urged the Book in 7 E. 3. 23. b. and 24. a. where Alice brought an Action of Trespass against one William, of Falle Imprisonment: The Defendant said, That before the Imprisonment it was commanded in the Marshalsea, That if any Woman follow'd the Houshold of our Lord the King, she should be taken and imprisoned, and this Alice follow'd the Houshold of the King, wherefore John Claydon then Marshal commanded this William who is Gaoler to take her, wherefore he took her by his Commandment, and for such Cause, and we do not conceive that she can assign any Wrong in our Person, and there the Rule of the Book is, That William the Defendant did no Wrong, tho' he receiv'd her, whether the Caule were allowable or not; for he ought to be obedient to his Sovereign; but the Gaoler pught always to receive whosoever is fent to him by his Sovereign, be the Caule of the Taking allowable or not; and there iffue was taken whether the Defendant had the Plaintiff of the Delivery of the Marshal. So in the Case at Bar, the Officers of the Court are not to dispute their Authority, but ought to be obedient, and execute the Warrants and Command of the Judges of the Court: And upon this Ground are the

Books in 8 E. 3. 38. 17 E. 3. 66. 19 E. 3. Quare non admist 7. Plo. Com. Morgan's Case 12, 13. 7 H. 4. 27. 11 H. 4. 35. 9 H. 6. 20. 2 R. 3. 10. 21 H. 7. 22. 14 H. 8. 16. Vide temp.E. 1. Affife 402. 32 E. 1. ibid. 378. 17 E. 2. Aff. 373. 19 E. 3. Scire facias 12. 31 Aff. 19. 10 E. 3. 47. 14 H. 4.24. 21 E. 4. 66. 21 H. 6. 36. 21 H. 6. Trespass 50.

But upon folemn Argument at the Bench it was unanimoufly resolved, That Judgment should be given against

the Defendants.

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And as to the first Point, it was divided into five Parts. TheRefolution 1. What Jurisdiction the Court of Marshalfea had at the to 1 Point. Common Law before the Act of Articuli Super Chartas, anno 28 E. 1. and therein the Extent of their Jurisdiction was confidered; sc. 1. In what Actions the Court had Jurisdiction. 2. To what Place their Jurisdiction was circumscribed, and to what Persons their Jurisdiction extended.

2. The Reasons why the Common Law gave them as Judges of the Court of Marshalsea, such particular and li-

mited Jurisdiction.

3. Confideration was had of the Act of Articuli Super Chartas, and therein three Points were discussed, I. Why this Act was called Articuli Super Chartas. 2. What Manner of Act it was, whether introductory of a new Law, or declaratory of the old. 3. The several Parts of the Act were confidered.

4. The Authorities of Law in all Successions of Ages

fince the faid Act.

5. The Nature of this Action upon the Cafe fur Assump.

As to the first, it is to be known, That the Steward and Marshal of the King's Houshold, had before the said Act two distinct Authorities; one, they had such general Authority in Effect as Justices in Eyre had, for they were the Vicegerents in Part of the Chief Justice of England within the Verge: Also the Steward and Marshal had another Authority, sc. to hold the Court of Marshalfea, the Title of which was, Plac. Coronæ Aulæ Hospitii Dom. Regis coram 6 Co. 21. a. Seneschallo & Marischallo. By Force of their first Authority, Poster 73. 2. hey might hold all Manner of Pleas of the Crown, and of Inst. 549. Common Pleas, as well real and mixt, as personal, and that ppears by divers antient Precepts of Summons which they led to direct to Sheriffs, &c. to cause to come before them Il Pleas, &c. the Form of which was such; Robertus filius fobannis miles, Seneschallus bospitii domini Regis Vic. S. alutem: Mandamus quod ven' fac' coram nobis tali die ubiungs dom' Rex tunc fuerit in balliva tua omnes Assijas nove di ffeisine

Assis, & omnes juratas, inquisitiones & artinesas, & omnia placit' de dote Unde mulieres nibil babent & que summ' sunt coram Justic' Regis ad primas Assis cum in partes il las venerint, immo & omnes Assis illas & placita illa, juratas, inquisiciones & attinesas illas que coram Justic' Regis ad Assis capiendas in balliva vestra assignatis suerint attaminate & non finite. Et partibus diem illum presigatis qu' tunc fint ibi Assis illas, & placita illa, juratas & inquistiones & attinesas illas, & placita illa, juratas & inquistiones & attinesas illas in eodem statu quo remanserunt coram presar Justic' prosecur si voluerint. Venire etiam sac coram nob' dietis die & loco, omnes prisones & manucaptos de balliva vestra, & omnia attachiamenta que pertinent ad gaolam deliberandam. Fac etiam proclamari & sciri pertotam ballivam vestram quod omnes liberi & quatuor bomines & præpositus de villatis quar interfuerit quod tunc sint ad deliberationem predictam. Et babeat ibi Recognitores,

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And that they had fuch general Authority, appears in Fleta, who wrote before the faid Act of 28 E. r. lib. 2. cap. 2. Habet & Rex Curiam firam coram Seneschallo suo in Aula sua, qui jam tenet locum Capitalis Justiciarii Regis, de quo sit mentio in communi brevi de Hom repl', qui proprias caufas Regis terminari consuevit, & falfum judicium ad veritatem revocare, & conquerentibus absque brevi justitiam exhibere; cujus vices gerit in parte idem Seneschallus bospitii Regis, cujus interest de omnibus actionibus contra pacem infra meras hospitii. Sc. recenter illatis etiam fine brevi. &c. auditis queremoniis injuriarum in aula regis audin & terminare assumpt sibi camerar', hostiar', vel Maris challo ante, militibus, vel aliquibus corum, somnes inter-esse non possunt. Et cap. 3. Habet Seneschallus ex virtute officii sui predictam patestatem procedendi ad utlaga tiones & bella injungendi, & omnia & singula faciend qui ad Justiciarios ininerantes, prout superius dictum est, pertinent faciend, boe tantum excepto quod de libero tenemento intromittere non debot fine brevi. And there it appears That the Steward, &c. held this Court in Auta Regis; and what Authority Justices in Eyre had to hold Pleas of the Crown, and all common Pleas, real, mist and per-fonal, you may fee in the Mirror of Justices, cap. 2 sett. 3. where it is said, The Kings do Right to all by their Justices Commissaries errants assigned to all Ples. Vide the Statute of Westm. 2. cap. 11. Bracton lib. 3. cap. 1 fol. 105, &c. and 115. b. Britton cap. 1. 6 E 2. Affife 496. 4 E. 3. 41, 42. 6 E. 3. 55. 27 Aff. plac. 1. 15 H. 7. 5. b. And it is to be observed, That he who is Prisoner to the King's Bench, is in custodia Mareschalli Mareschalciæ Do 772171

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mini Regis; and he who is Prisoner to the Marshalfes of the Houshold, is in custodia Marest Mareschalcie hospitii dom Regis. And thereby allo it appears, That the Steward, &c. vices gerebat capitalis Justiciarii. And therewith agrees Britt. C. I. who wrote in 5 E. I. which was before the Stat. of Articuli sup' Chartas; and that the Marshal of our Houshold hold our Place within the Verge of our Housh, and that his Office extends it felf to hear and determine the Prefentments and Articles of our Crown when we shall see it good. And note, That these Articles were those which Justices in Eyre charged the Jury to enquire of, as it appears in Bra-Eton, Lib. 3. Tract. 2. cap. 1. fol. 116. And therewith a grees the Mirrer of Justices, which Book was also wrote before the faid Act of 28 E. 1. To the Offices of the Chief Justices belong falle Judgments and Errors, &c. and so it belongs to their Office to hear and determine all Plaints made of personal Wrongs within twelve Miles round about the King, and the Gaol-delivery of Prisoners deliverable, and to determine as much as is to be determined by Justices hinerants. And Bracton also, who likewise wrote before the said Act, Lib. 3. de actionibus, cap. 7. fol. 105. Habet Rex plures Curias in quibus diverse actiones terminantur, & illarum cur' babet unam propriam sicut aulam Regiam, & Justiciar Capitales qui proprias causas Regis terminant, & aliorum omnium, per querelam, vel per privilegium, vel per libertatem.

As to the other Authority, the (a) Steward and Marshal (a) 6.Co. 12.2. are Judges of the Marshalsea of the King's Houshold, and F. N. B. 241. b. this Court at the Common Law had a particular and limit- 20 E. 4. 16. b. ed Jutisdiction: 1. In respect of the Causes; for they as Cr. Jac. 314. Judges of this Court had Jurisdiction only of Pleas of the 1 Bulftr. 210. Crown, and of (b) three particular common Pleas, sc. Pleas (b) 2 Inst. 548. of Debt, Covenant and Trespass vi & armis, as of Battery, Postea 74. b. Goods taken away, but not of Trespass Quare clausum fregit, Ejectione firme, Action on the Case, Detinue, nor any other personal Action, nor of any real or mixt Action: 2. In respect of the Persons; for in (c) Debt and Covenant both (c) 6 Co. 20. b. the Parties ought to be of the King's Houshold, but in Irelpals it was sufficient if one of the Parties was of the King's Houshold, and this also appears by Fleta, lib. 2. cap. 3. Si autem de aliquo familiari Regis (i. any of the King's Houshold) fiat queremonia, primo summoneatur, That the Trespals ought to be vi & armis, and not upon the Case, otherwise a (d) Capias lay not at the Common Law; (d) 3 Co. 12. 2. and also that it was sufficient if one of the Parties was of he King's Houshold. But foralmuch as the Steward ind Marshal had at the Common Law these Authoriies, the one general, and the other particular, and both

(a) 4 Co.47. 2 Postes 74. 2. F. N. B. 241. b. (b) 1Bulftr.209.

Courts then held in aula Regis; and that they had the ge neral Authority but at Will, and had a fixed Estate for their Lives in the other, they drew to their Court of the Mar-Shalfea, by Colour of the faid general Authority, many Causes which did not by Law belong to the Jurisdiction of the said Court. 3. In respect of the Place to which their Jurisdiction was circumscribed; and that appears by Fleta; lib. 2. cap. 2 .. Infra metas bospitii continentes (a) 12. leucas in cir. cuitu, and the Mirror of Justices ubi supra. And this was the Law before the Statute of (b) 13 R.2. cap. 3. but that limits the 12 Miles to be computed from the King's Lodgings. And the Steward and Marshal, being so re-Arained, invented divers Means and Devices to enlarge their Jurisdiction, and to encroach upon the Common Law; and therefore if in the Bond or Covenant, &c. Mention was made of Diffress of the Steward or Marshal of the King's Houshold, or one of them, they would hold Plea thereof, altho' the Bond or Covenant was made out of the Verge. And also they used to take Conusance of Debts and other Things, where the Parties were not of the King's Houfhold, and that appears by Fleta, lib. 2. cap. 3. mum de obligationibus & contractibus, in quibus debitores ad districtionem Seneschalli & Mareschalli domini Regis sponte se obligaverint. Et paulo post, Et notand quod in obligatione omni in qua fit mentio de districtione Seneschalli & Mareschalli hospitii Regts vel eorum alterius tantum, audit sunt partes, & loquela terminata sine brevi ubicunque se contraxerint infra virgatam vel extra coram sen' nisi loquela liber' tangat ten' ejus vel pertinent', Nec obstabit petenti exceptio de contractu facto extra virgatam, ut inter placita Petri de Chamnet anno regis regni Ed. 18. inter Henr' de Wotton petentem, & Ranulfum Foleschanks obligat' prefat H. in necessariis pro victu & vestitu & bujusmodi ad valenc. 20 li. per an' suo perpetuo inveniend' pro quad terra in D. & quadam balliva in S. & unde idem R. obligavit se in Lond' districtioni Sen' & Mar' Regis anno 15, Rege tunc existente in Vascon'. Cui exceptione de non infra virgatam non allocata, petiit judicium si de libero ten' vel ejus pertin debuit sine brevi Regis respondere, cum idem H. petiit certum redditum ad terminum vitæ sue: Et quia voluit sic obligari, nec volenti & scienti fit injuria; considerat' fuit per plures Justic' qui aderant, ex quo necessaria illa proveniebant tanquam de Camera & non de loco certo de quo potuit visus fieri, quod exceptio predicta locum non haberet, & quod aliud diceret & responderet, vel pro indefenso & convicto haberetur. Another Invention ad ampliandum jurisdictionem suam, was, That altho' none of the Parties was of the King's Houshold, yet they would name them in the Declaration and Plea of the K.'s Houshold, and

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fo as they conceived, to effop the Party to contradict it. But to conclude this Point, it appears to you, good Reader that to know what the Law was before the Act of 28 E. 1. how necessary the Authorities of the said ancient Books of the (a) (a) 8 Co. 35. 2. Mirror of Justices, of Bratton, Briton and Fleta are to discuss Piow. 357. 2. this Point; and altho' perhaps one may know the Law upon the ancientStatutes, yet he will never know the trueReason of the Interpretation of em, unless he knows what the Law was before the Making of them; and therefore it is true, Quod multa ignoramus que nobis non laterent si veterum lectio

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As to the ad Point, the ancient Stile of the Court of the Marbalfea was, (b) Placita Corone aule hopitii Dom' Reg' tenta (b) 6 Co. 21. 2. coram, &c. by which Words aulæ bospitii, it is proved, that at Dod. pl. 87. least one of the Parties ought to be of the K. s Houshold : For 2 lnit. 549. how can the Words be aula hospitii Dom' Reg', when none of the Parties is of the K.'s Houshold? And it was observ'd, that those who are of the K.'s Houshold are call'd Aulici, and that is the Reason that it is not necessary in Suits there before the (c) Doct. pl. 87. Steward and Marshal, (c) to alledge that the Pl. or Def. was of 247. the K.'s Houshold, for the Style of the said Court, as appears afterwards by many Authorities, implies it. The 2d Reason is because the Proceedings in the same Court is by Bill in respect of the Privilege of the Parties, and not by original; and the Court of K.'s Bench can't hold any Com. Plea by Bill without Privilege of the Court. The 3d Reason, That the Service and Attendance of the K.'s Servants were so requisite and necessary to the K. that the Pleas in the faid Court should be rather difcontinued by his removal out of the Verge, than he should lote the Attendance of his Servants: And if they might hold Pleas betwixt meer Foreigners, what reason could there be that the Pleas should be discontinued by the K.'s Removal? And why should the Judges of the K.'s Houshold decide Causes, when none of the Parties is of the K.'s Houshold? (d) Jurisaictio est di Bulit. 210. potestas de publico introducta cum necessitate surisdicendi. And that agrees well when the Parties are of the Houshold for the Necessity of the K.'s Service, but not when none of the Parties is of the same Houshold. In Mich. 42 & 43 El. in the K.'s Bench, (e) Hall brought a Writ of Error against Jones of 2 (e) Moor 623, Judgm. given in the Court of Pipowders of the Market in the 624. City of Gloucester, for Jones Register to the Bp. of Gloucester, 4 Inst. 272. because Hall had published flanderous Words of him, sc. That I Rol. 544. Mr. Jones and his Clerks have by Colour of his Office extorted 2 Bulft. and gotten 300 l. per annum, by unlawful Means for many (f) 4lnft.272. Tears together, above their ordinary Fees, for proving of Te- Cro. El. 773. staments, and granting of Administrations, and the Judg- ! Rol. 544. ment was reversed for two Errors. 1. Because the said 2 Bull 11, 24. Words did not concern any Marter (1) touching the Men. Words did not concern any Matter (f) touching the Mar- Moor 830, 831. ket, and therefore the Court had no Jurisdiction of them; Cro. Car. 46.

(a) 2 Inft. 272. 2 Bulft. 21. (b) Moor 624. 4 Inft. 272. 2 Bulft. 21. (c) Cro El. 773.

(d) Dy. 132. pl. 80. Jenk.Cent 211. Moor 830. 1 Rol. 544. Finch Ley 132. a. 4 Inft. 272. Kelw. 99. a. (e) Fitz. Co. 2. B. Error 171.

(f) Rastal Chancery 1. 2 Inft. 551.

(g) 9Co.118.b. 2 Inft. 26, 166.

but if one slanders any one who trades in the Market, in any Thing which (a) concerns his Trade, there an Action lies well. 2. It appears in the Declarat. that the Words were spoken (b) before the Market, and not in it: For as the Court had no (c) Jurisdict. but for Things concerning the Market; so it had no Jurisdict. for Matters concerning the Market, unless they were done in the Market. Vide 2 & 3 P. & M. (d) Dy. 132. Vide Bract. 334.(e) 13 E. 4.8. b. 7 H.6. 19. 13 H. 7. 19. b. the Stat. of 27 H. 6.c. 5.17 E.4.c.2. & 1 R.3. 6. pariratione, it would be 2 Bulft. 21, 23. against Reason that Pleas should be held coram Senesc' & maresc' hospit'Dom' Reg' of a Thing which doth not concern any of the Houshold. The fourth Reason, ex congruo, it would not be feemly that any Carman or other mechanical Person should sue another in the same Court, and draw them in aulam Regis, where the Court was originally held, for they have not veftimenta aulica; and therefore it is recorded by S. Luke the Ev. c.7. v. 25. Dixit ad turbam, quidexiistis videre hominem mollib' vestimentis indutum? Ecce qui in veste preciosa sunt & in deliciis agunt, in domib' regum sunt. And the Com. Law regards Conveniency, and doth not allow aliquid indecorum, nor that which is done contra bonos Mores. 5. At the same Parliament, sc. an' (f) 28 E. 1. c. 5. it was enacted, that the Chancel. and Justices of his Bench should follow him, so that he might have at all Times near him some that be learned in the Law, which be able duly to order all fuch Matters as shall come to the Court at all Times when need shall require, and it appears by divers Records subsequent, That the Chancellor and the Judges after that Act had their Purveyors, &c. and that accordingly Purveyance was made for them, as appears in Rot. Pat. 10 E. 2. parte 2. Memb. 20. & 2 E. 3. parte 1. Memb. 33, &c. till 4 E. 3. at which Time the Court of K.'s Bench become refident, and all the Pleas there being coram Rege: And by the Act of 4 E. 3. c. 3. it was prohibited, that no Purveyance should be taken great or small, but only that the Purveyors of the King, Queen and their Children, take not Corn, &c But by the faid Act of 28 E. 1. c. 5. the general Authority of the Steward vanish'd, inasmuch as having regard to the same, they were but the Vicegerents of the Ch. Just. when he himself was present, (g) in prasentia major' cessat potestas minoris; and yet under Colour or their former general Authority, they encroached much upon the Com. Law. And it was observ'd, that the Court of Marshalfea of the K.'s House never held any Pleas of the Crown after the Making that Act, because the Justices of the K.'s Bench were to follow the K. and therefore they have used to hear and determine Pleas of the Crown within the Verge by Force of a Commission of (b) 9Co.118.t. Oyer and Terminer, in Vacation-Time, for in (b) Term Time when the King's Bench fets in the fame County all Commissions cease. Vide Katharine Wrote's Case in the fourth Part of my Reports, fel. 47. 4

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6. The Reason why this Court was limited to these 3 Actions, was, because one of the Houshold who lives on his Salary or Pension, has often Occasion to borrow Money, and make Covenants with others of the same Housho. for Apparel and other Necessaries; and for Trespais vi & arm' as Battery, carrying away of Goods, &c. they have Jurisdiction for the Preservation of the Peace, as aforesaid. 7. The Reason why the Bounds of the Marshaisea are call'd the Verge, and that its Jurisdiction is confin'd within the Verge is, because the Marshal portat virgam (que signat pacem) coram Rege per spatium (a) 12 leucarum, (a) 4 Co. 47. 1 Ec. & devirga prædict' dicitur virgata, and beyond that the F. N. B.241. b. Steward and Marshal never had Jurisdiction, and that ap-

pears in Fleta lib. 2. c. 4.

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As to the 3d Point, sc. The Confiderat. touching the Act of (b) 2 Inst. 3476 (b) Articulisuper Chartas c. 3. It was resolved, That Articuli 3 Inst. 134. Super Chartas, is as much as to say, (c) Explanationes Super 1 Bulft. 208, Chartas: and the Charters here mentioned to the charters here are mentioned to the charters here. Chartas; and the Charters here mention'd, are the Great Char- 209, 210, 211, ter, and the Charter of the Forest, and so it appears by the Pre- 2 Leon 160. amble, because the Points of the Great Charter of Liberties, and 4 Co. 46: 2. of the Forest, &c. and in Pierce de Saltmars S Case, the Book 6 Co. 12. 2. 20. b. faith, That Herle Ch. Ju. in 6 E. 3.33. b. order'd the Explana- Antea 71. a. tions upon the Charters, sc. the 11 Chapter of Champerty to be 5 E. 4. 129. a. read. By which it appears, that Articuli in this Case signifies Br. Action sur le Stat. 38, 49. Explanationes; and some say, 9d dicuntur Articuli quia ar- 10 H. 6. 13. a. Cant adobedientiam : But then it will be ask'd in what Part of Reg. 185. 2. Magna Charta can one find any Thing concerning the Court 191. b. of Marshalfea? To that it was answer'd, that the (d) 29 Chap. Rast. Ent. 433.20 of Mag' Char' extends to it, for there it is enacted, Qd' nullus (c) 2 Init. liber homo capiatur, vel imprisonetur, aut disseisietur de liber' (d) 5 Co.64.a. ten'to suo, vel de libertatibus, vel liber' consuetudinib' suis, aut 2 Buist. 328. utlaget' aut exuletur, aut aliquo modo destruatur, nec super eum 1And. 158. ibimus, nec super eum mittemus nisi per legale e) judic parium 1Rol. Rep 225. fuorum aut per legem terra; by which Act every Arrest or Im- 4 Leon. 61. fonm.and every Oppres. contra legem terra is prohibited. Then, (e) 2 Inst. 48. if any against the Law usurp any Jurisdiction and by Colour thereof arrest or imprison a Man, or in any manner by Colour of an ulurped Authority oppress any Man (which is a manner of Destruction) against Law, he may be punished by that Statute: And because the Steward and Marshal of the Court of Marsbalsea had encroach'd to em Jurisdiction in divers Causes which did not belong to them, and by Colour thereof awarded Precepts sometimes to arrest the Body of the Defendant, and lometimes the Colour of Execution to sell, &c. the Goods and Chattels of the Defendant against Law, which is an Oppression by Colour of Justice, and a manner of Destruction, for that Reason this third Chapter was enacted for Explanation of the said Great Charter, as to the Jurisdiction of the said Court of Marshal-Jea. So that this Act of Articuli super Chartas, is not

introductory of a new Law, but an Explanation of the Great Charter, which wasdeclarat of the ancient Com. Law of Eng. But it appears also by this 3d Chapter, the Parts whereof are now to be confider'd. This Chapter concerning the Court of Marshalf, is divided into two general Parts. f. Into the Pre-amble, and the Body of the Act: In the Preamble 3 Things are propounded to be remedied by the Body of the Act; 1. Of the Estates of the Stewards and Marshals, id est concerning the Jurisdiction by Force of their Offices in which they have Estates, sc. for their Lives within the Court of Marshalfea. 2. Of the Pleas which they ought to hold, by which it appears that this Chapter was declarat for the Intent of this Chapter was to reduce the Court of Marshalf, to its true and lawful Institueion, which this Word (ought) imports, and therefore this Act demonstrates what Pleas they ought to hold, which well a-grees with the Title Articuli Super Chartas, and with the Book of (a) 6 E. 3. the Explanations of the Charter, i. e. of the Com. Law. The 3. is, how they ought to hold the Pleas. The Body of the Act pursues the Parts of the Preamble; and first the whole Purview thereof extends only to the Court of Marbalf. of the K.'s House. As to the Pleas which they ought to hold, the Body of the Act has made a Declarat. of 3 Points: I Of the Caufes. 2. Of the Perfons. 3. Of the Place. For the Causes, the Purview of the Act is in the Negative, in part abfolutely, and in part with an Exclusion. It is ordained from henceforth, That they hold not Plea of Freehold, and that is absolute; nor of Debt, nor of Covenant of the People, but that is with Exclusion, first to the Causes, (b) but only of Trespais of the Housho, and of other Trespass done within the Verge, and of Contracts and Covenants: So that these Words (but only, &c.) reduce, as to the Causes, the Jurisdict of the Court to its original Institut. fc. to Actions of Trespass, Debt and Covenent, and all other Pleas are excluded. As to the Persons, If this Act had not made any Particular Declaration, as appears before, they ought to have had the Privilege of the House, sc. in Trespais, where both, or as least one be of the House; and in Case of Debt and Covenant, where both are of the House, and of that also this Chapter has made an express Declaration. (c) Cro. El. 502. And the Exposition in (c) Michelborn's Case in the 6th Part of 6 Co. 20. 21. 2 my Reports was affirm'd for Law: And Vide there an Act paffed both Houses of Parliam. an' 1 R.2. & vide inter petitiones Parliam' an' 1 E. 3. Lond' 10. that there the Steward and Marshal, after the said Act, did encroach to 'em to hold other Pleas than of Trespass, Debt and Covenant. As to the Place, the Statute has restrained it to the Verge, only; and because by Colour of certain Inventions of the Steward and Marshal

> ad ampliandam Jurisdictionem suam as to Pleas, Persons and Precinct, this Chapter has enacted, That from henceforth

> > the.

(a) 6E.3 33.b

1 Bu ft. 208,

210, 213.

(b) 6 Co. 20. 2.

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the Steward hold not Plea of Debt or other Thing, but of the People of the Houshold, fo' that the voluntary (a) Conu- (a)FN.B.242.2. fance of Debts before the Steward and Marshal by Foreigners, did not give the faid Court Jurisdiction, but as an unjust Encroachment upon the Com. Law was ousted by this Act. It is also further enacted, That they shall hold no Plea by Bond made at the Diffress of the Steward or of the Marshal; by Colour of which, as appears before, they encroached to themfelves Jurisdict. not only when the Parties had no Privilege, but also of Causes which did not belong to their Jurisdiction, and those also done out of the Verge, as appears by that which Fleta has before reported, and who has well expreffed the true Cause and Sense of the two last Branches, which of themselves were full of Obscurity. As to the third Part of the Preamble, sc. How, &c. the Body of the Act has three Branches: 1. That they shall plead no Plea of Trespass, except the Party was attached by them. 2. And they shall plead speedily from Day to Day, so that they may be pleaded and determined before that the K. depart out of the Bounds of the same Verges where the Trespals was done. 3. And if to it chance, that they can't be determined within the Bounds of the same Verge, the Pleas shall (b) cease before (b) F. N. B. the Steward, and the Matters be determined at the Com. Law. And it was observed, That altho' the (c) Steward and (c) Ant. 72. 2. Marshal are both Judges, yet in this last Clause, as many in 6 Co. 12. 2.

Marshal are both Judges, yet in this last Clause, as many in 6 Co. 12. 2. Fleta, the Steward is only named, because he was the Law- 19 E. 4. 8. b. yer, and therefore had the Direction of the Court. And the 20 E. 4. 16. b. Conclusion of the Body of the Act, as to these three Points, Cro. lac. 314 is, and if the Steward or the Marshal do any Thing against this Ordinance, it shall be held as void. And this Act was of so great Profit and Consequence, that by the Act of Parliament anno 18 E. 3. cap. 7. it is enacted and commanded to be put in Execution.

And as to Authorities in Law, they are copious, and of four feveral Natures. 1. The Year-Books. 2. Books written of the Laws of England. 3. Judgments in Parliament: And all these are Thesauri aperti. 4. Judicial Records and Precedents: And these are Thesauri absconditi. for direct Authority in the Point in the Year-Books, Vide (d) 6 R. 2. Action fur lestatute pl. ult. 3 H. 6. Estoppel 18. (d) Br. Action Action sur lestatute 13. 7. H. 8. 30. 10 H. 6. 13. a, 14 H. 6. Post. 77. 2. 6. b. 5 E. 4. 129. a. 19 E. 4. 8. b. 20 E. 4. 16.b. 22 E. 4.11. 22 E. 4. 16. 22 E. 4. 31. b. Vide 48 E. 3. 17. b. & Register Original 111. the Plaintiff shall never aver, &c. that the one or other Party is of the Houshold causa qua su-Register Original 185. a. inter brevia de Statuto, Rex Seneschallo & Mareschallo hospitii sui salutem (and recites the faid Chapter of the Statute) & etiam

The Case of the Marshalsea. - PART X.

ex gravi querela A. de B. accepimus, quod vos ad sectam R.

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ipsos ad respondendum coram volis præsat R. de quadam transgressione, &c. infra virgam nostram apud B. quanquam neuter eorum de eodem hospitio existat, &c. vobis mandamus quod si ita est, tunc placito illo coram vobis ulterius tenend' Supersedeat' cmnino ipsum B. contra formam ordinationis pred' non molestant' in aliquo, seu gravant'. Which Writ being form'd upon the faid Stat. and presently after the Making of it, is a manifest Proof, that the Court of Marshalfea can't hold Plea in Trespass within the Verge, if none of the Parties are of the K.'s House. And it is to be observed, that where any Stat. prohibits any Thing, a Man may have a Supersedeas in the Nature of a Probibition to any Judge who shall hold Plea against any Stat. and this appears in many Cases in the Register inter brevia de Statuto. It is likewise to be obferved, That when any Stat. prohibits any Thing, &c. if any one impleads another, altho' it be in Course of a legal Proceeding, yet the Party grieved shall have an Action upon the Stat. against the Party who sues against the Stat. (a) altho' the Words of the Stat. do not give any Action to the Party, but that is a Consequent, and a Thing implied in every Thing prohibited by any Statute: And this appears by the said Book of (b) 7 H. 6. 30. b. 31.a. where the Party grieved had an (c) Action upon this very Stat. and 4 E. 4. 37. a.b. an Action upon the Stat. of (d) 2 H. 5.c. 7. for not delivering of the Libel. The Tales sive nove Narrationes, f. 102. a Book cited and approved in 39 H. 6, The Diversity of Courts 102. F. N. B. 241. b. a Man shall have an Averment in an Action brought against him in the Court of the Steward and Marshal, That he was not of the K,'s Houshold at the Time of the Trespass or Contract made; or that the Plaintiff was not of the K,'s Houshold. Vide (e) Stanford lib. 2. C. 5. And this Point is resolved by Parliament in (f) 15 H. 6. cap. 1. where it is recited, That the Steward and Marshal of the K.'s House and their Deputies, have held Pleas of Debt, Detinue, and other personal Pleas betwixt People which were not of the same House, making Mention in their Records, that the Plaintiffs and Defendants were of the same House, and not allowing to the Parties Defendants their Challenges and Exception by them alledged, that themselves or the Plaintiff are not of the same House, against the Laws and Statutes in those Cases made and provided, That they shall not be estopped by such Record, &c. but the said Desendants shall have their Averment to say, That they or the Plaintiffs were not of the same Houshold, at the Time of fuch Plea or Suit commenced, the faid Record or other Matter therein contained notwithstanding. By which Act the faid Invention to increase their Jurisdicti-

(a) F. N. B. 160. b. 163. a 165. b. 166. d. 241. c. 242, 2. Dalf. Sh. 121.2. 2 Bultr. 209. Cro. Jac: 134, 2 Intt. 55, (6) 6 Co. 20, h. Br. Action fur le Stan. 13. Fitz. Bir. 17. (c) Fitz. Action fur le Stat. 35. Br.Jurifdict.97. (d)2H.5 cap.3. 12 Co. 61. 1 3 Co. 42. 3 Bulftr. 5.120. Reg. 58. a. Cr. Jac.37.388. Moor 756. (e) Stanford or. lib. 2. c.5. (f) I Bulftr. 209, 213. Rait, Marshalfea 7.

Inft. 130.

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1 ModRep. 173.

on was taken away, which was but a Declaration of the Com. Law, asappears by the faid Book in 3 H. 6. Estoppel 18. 85 10 H. 6. 13. Vide the faid Acts of 30 E. 1. 1 E. 3. 1 R. 2. 5 E. 3. 10 E. 3. 5 33 H. 8. cap. 12. And it was observ'd, that every Aft made concerning the Marshalsea, either restrains or explainstheir Jurisdiction, and no Actadds any Thing to it. As to judicial Records, it appears in Pasch. 38 E. 3. in the Treasury coram Rege, That Judgm. given in the Marshalfea in an Acti-(a)15H6.cap.1. on of Detinue, was reversed in the King's Bench, because they (b) 6 Co. 20. had no Power to hold Plea in such Action; and therefore in Cro. El. 502. the faid Statute of (a) 15 H. 6. in the Preamble, the Acti-(c) 1 Bulft.208,209. on of Detinue is ill recited.

In the Book of Entries 278 & 128. Conusans 7. & 32 H. Godb. 284. 6.(b) Purchase's Case cited in Michelborn's Case, which see (d) 6 Co.20.b.

there to be adjudged in the Point.

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As to the Nature of the Action, It was refolv'd, That as i Bulit. 208, well the Com. Law, as the faid Act of 28 E. I. extended only 210, 213. to Trespass simpliciter, and not to Trespass secundum quid, sc. Co.Car. 6.31.
upon the Case; for these are not Actions of Trespass without Hob. 5, 18. Addition, no more than they can hold Plea in an Action of Yelverton 176. Trespass upon Trover or Bailm. and Conversion, or the like, 213, 214, 245, but only of Trespass simpliciter, st. vi & arm' and also of such 397, 548, 642. 1
Trespass in which any Freehold can't come in Debate, as is Cro. El 242.

aforesaid; and according to this Resolution it was adjudged codb. 401. in the K.'s Bench, Hill. 5 Jac. Reg. Rot. 876. in (c) Jeremy Hard. 132,133. Gray's Case. That Judgm. given in the Court of Marshalfea Palm. 171. in an Action upon the Case upon Trover and Conversion, was I Bulit 67. reversed, because the Statute did not extend to Trespass upon 3 Bultt. 207. the Case; and therewith also agrees (d) the said Case of Jenk. Cent. 293. the Case; and therewith also agrees (d) the said Case of Jenk. Cent. 293. Michelborn. But altho' this Action of Affumpfit upon (e) ge- 379, 396. neral Confideration, quod indebitatus existit, be against the Moor 874 Law, as appears in Slade's Case in the fourth Part of my The Resolution Reports, yet if they had Jurisdiction of the Cause, their Point. Proceeding therein was not void, but voidable by Writ of Er- (f) Plow.13.2. ror. But that shall be spoke to more at large in the second 9 Co.63 a.

Point which now follows Point, which now follows.

It was refolved, That the Action well lies against the Hard. 481. Defendants: And a Difference was taken when a Court Cart. 19. has (f) Jurisdiction of the Cause, and proceeds inverso ordine, Cro. Car. 395. or erroneously, there the Party who sues, or the Officer or March 8. Minister of the Court who executes the Precept or Process (g) Hard. 478, of the Court, no Action lies against them. (g) But when 481. the Court has not Jurisdiction of the Cause, there the whole Cart. 19. proceeding is coram non Judice, and Actions lie against 'em Cro. Jat. \$14. without any regard of the Precept or Process, and therefore Lutw. 1560, the faid Rule cited by the other Side, sc. (b) Qui juf- 1561.

su judicis aliquod fecerit (but when he has no Jurisdiction, Salk. 201, 202, non (b) Ant. 70. b. L 4

(a) 6 Co.52.b. 9 Co. 68. a. 2Rol.Rep.434 Moor 767.

395, 602.

(d) Br. Faux Imprifonm. 8. Br. Peace 6.

(e) 3 Inft. 130. Riz. Corone 77.
Br. Appeal 28.
Br. Corone 25.
(f) Firz. Juffice of Peace f.
Br. Peace 1. Br. Appeal 18. (g) 3 Init. 130. Ha.pl. Cor. 194.

b) Supra.

(f)31B.3 c.15. Stam. Cor. 84. a. b. 6 H. 7.2.4 Br. Indiament 20, 95. Br. Leet 17,21. 38 H. 6, 7. a. Fitz. Tourn de Viscount 2, 6. Firz. Inditement 14. Hundred 2.

non est judex) non videtur dolo molo fecisse, quie parere necesse oft, was well allow'd, but it is not of Necessity toobey him who is not Judge of the Caufe, no more than it is a meer Stranger, For the Rule is, Judicium a non suo judice datum multius oft momenti, And that fully appears in our Books: And therefore in the Cafe betwixt Bowfer and Collins in 22 E. 4. 32. b. there Piggot fays, if the Court has not Power and Authority, then their proceeding is coram non judice : As if the Court of Com. Pleas holds Plea in an Appeal of Death, Robbery, or any other Appeal, and the Def. is attainted, it is coram mon judice, quod omnes concesserunt. But if the Court of Com. Pleas in a Plea of Debt awards a (a) Capias against a Duke, Earl, &c. which by the Law doth not lie against 'em, and that appears in the Writ it felf; and if the Sheriff arrests em by Force of the Ca-pias, altho the Writ be against Law, notwithstanding, insfmuch as the Court has Jurisdiction of the Cause, the Sheriff is excused: And therewith agrees 38 H. 8, Dy. 60. b. The same Law, If a Justice of Peace makes a Warrant to arrest one for (b) Dy. 69. pl. 29. (b) Felony who is not indicted, although the (c) Justice errs in (c) Cro. Car. making the Warrant, yet he who makes the Arrest by Force of making the Warrant, yet he who makes the Arrest by Force of that Warrant, shall not be punished by Writ of false Imprison-ment, because he is Judge of the Cause; and therewith (d) agrees 14 H. 8. 16. a. But if one, be indicted before Justices of Peace and confesses the Felony, and has a Coroner, and becomes an Approver, and makes an Appeal, such Appeal before the K. was adjudged void, as appears in (e) 9 H. 4 1. b.& (f) 2 H. 4. 19. a. Vide 44 E. 3. 44. a. b. and the Reason of that Case (as some suppose) is, because the Commission of Peace extends only adinquirendum, (sc. to inquire before themselves) andiendum & terminandum; and so the Appeal of the Approver is out of g) their Commission, because the Approver doth not make his Appeal before the Justices, but before the Coroner, and the Coroner Records it to the Court. But the Reason which is given in (b) 9 H. 4. 1. b. is, that the Justices of the Peace have no Power to affign him a Coroner, no more than they can enquire of Treason, as it is there also held, because it is not within their Commission. So where the i) Sheriff, who is prescribed by the Law to hold his Turn within the Month after Michaelmass, &c. holds his Turn after the Month, and takes an Indictment of Robbery at the same Turn, and the Indictment is by Certiorari removed into the King's Bench, by the Advice of all the Justices the Party so indicted was discharged, because the Indictment was utterly void, and coram non judice, forasmuch as at that Time the Sheriff had not Authority to hold the Court. And it was faid by the Justices, That if a Man has a Leet which has been held at a certain Day, if he holds it at another Day, that such Court so held is void, and without Warrant; and otherwise is it of a

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Court-Baron. But if the Court of Common Pleas holds Pleas in Debt, Trespass, &c. without an Original, it is not void for they are Judges of those Pleas, and it can't be faid that the Proceeding is coram non judice: And therewith agrees (a) 6 Co. 20. b.
(a) 19 E. 4. 8. b. and therewith in the Point, agrees the faid (b) Br. Action
Book in (b) 6 R. 2. That Judgment in the Marfbatta, when fur le Stat. 49.
(c) none of the Parties is of the K.'s Houthold, may be a (c) F.N.B. 241.
voided by Plea (d) without any Writ of Error, which proves (d) Contr.plac.
that it is void. Vide 20 E. 4. 16. b. 22 E. 4. 31. 8 to H.

6. 13. a. It is agreed in the Point also, That in Trespass bepl. 14. fore the Steward and Murshal, if none of the Parties be of it Co. 64. b. the K.'s Houshold, there it is corem non judice, because 2 Rol. Rep. 100. they exceed their Power. The fame Law, if they hold Plea out of the Verge, as it is held in Plo. Com. Plat's Case 37.b. (b) 2 Brownl. and that agrees with the Rule, Extra territorium jus dicenti non paretur impune. Vide 22 Ass. 64. Plo. Com. 394. b. 379, 396. 37 Ass. p. 17. 39 E. 3. 33, 34. 39 A. p. 6. 7 H. 4. 27. 11 H.4. 1 Bullet. 67. 37 All. P. 17. 39 E. 3. 33, 34. 39 A. P. 0. 11. 4. 27. 3 Bulkr. 207. 36. 36 H. 6. 32. 22 E. 4. 32. 1 R. 3. 1. 2 R. 3. 2. 5 H. 7. 3 Bulkr. 207. Moor 667,8541 17. b. 9 H. 7. 12. 21 E. 3. Barre 271. 3 Mar. (e) Dy. 135. Antea 76. a. And with this Difference all the Books were well reconciled. Cro. Car. 6, 31. And as to the faid Case of (f) 7 E.3.23. b. 24.4. by the Com. Hob. 5, 18. Law it belongs to the Office of the Marshal to protect the 213, 214, 245. Court from Whores, as appears in Fleta, lib. 2. 6. 5. (g) Ma-397, 548, 642. reschalli interest virgatam a meretricibus omnibus protegere Cro. Eliz. 242. & deliberare,& babet Mareschal. ex consuetudine pro qualibet meretrice communi infra metas hospitii inventa 4d. primo Godb. 41. die, que si iterum in balliva sua inveniat', capiatur, & cor Hard. 132,133. Seneschal' inhibeant' ei hospitia regis reg', & liberor' suor', Seneschal' inhibeant et hospitia regis reg, & liberor' suor', Palm. 171.

ne iterum ingrediatur, & nomina ear' imbrevient', que si i Jenk. Cent. 293.

terum inventa suerint hospit' secutrices, tunc aut remaneant Yelv. 176.

in prisona in sinculis aut shoute pred'hospit' abiurent: que (i) Cro. Car. in prisona in vinculis, aut sponte præd' hospit' abjurent; que si autem tertio invente fuerint, considerabitur quod ampute- 1 Mod. Re. 163. tur eis tressoria & tondeantur, que quidem si quarto inve- 4 Co. 93. 2. nient', tunc amputentur eis superlabia, ne de cetero concu- Cro. El. 756. piscant' ad libidinem. This being the Law, it appears, that Moor 433, 667. the Report of the said Book of 7 E. 3. is so obscure and Dyer 21. pl. imperfect, that much of the Substance of the Matter ought (k) 9 Co. 87. 2. to be supplied by Intendment.

And the Chief Justice in the Conclusion of his Argument Swinburn 327. observed, That all the Cases in which before there was Di- Cro. El. 121, versity of Opinions betwixt this Court and the Court of K.'s 454, 459.

Beach, are now unanimously resolved. 1. That the (b) ge- 1 Rol. Rep. 924.

Yelv. 20, 56, neral Declaration in an Action upon the Case Qd' cum inde- 196, 197 bitat' fuit in such a Sum, sup' se assumpsit, without shewing 2 Brownl, 136, the Cause of the Debt, is insufficient. 2. That a (1) parti- 137. Cro. Jac. 273, cular Declarat. in such Case shewing the Cause of the Debt, 293, 294, 404, altho' it appears that the Pl, may have an Action of Debt, well 23 lies, as it was refolved in Slade's Cafe. 3. That (k) for an Af 3 Bul. 235,236. Sump' of the Testator, &c. to pay a Debt or Duty, an Act. upon Moor 691. the Case lies against the Executors, &c. as it was adjudged Jenk. Cent. 290

1 Roll.Rep.246 1 Leon. 155, Doct. pl. 20. 1 Lcon. 165.

The Case of the Marshalsea. PART X.

in Pinchen's Case in the 9 Part of my Reports. 4. This Case of the Jurisdiction of the Marshalles is now adjudged by both Courts, sc. in the Case of the said Jeremy Gray in the King's Bench, and in the Case at Bar in this Court; against which Judgments there is no Opinion in any of our Books, but as appears before many concurring in terminis with them in all the Points now resolved. So that our Successors, as I believe, may take up the Saying of the Prince of Poets.

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Haud unquam neq; concio nos neq; curia dichis Audivis pugnare, animo sed semper codem, Es sentire cadem, atq; cadem decernere vellet.

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Leonard Lovies's Case.

IN an Ejectione firme brought by Robert Prowt against 2 Brownl. 103.

Roger Worthen, on a Demise made to the Plaintiff by 2 Buller. 131. Leonard Lovies Gent' 13 Martii anno 7 Regis nunc, of 8 Moor 772. Acres of Land in Clawton in the County of Devon for five Years, from the last Day of June then last past. The Defendant pleaded Not guilty, and thereupon the Jury gave a Special Verdict to this Effect; Leonard Lovies Esq; was seised of the Manors of Affaland and Heanton in the Counties of Devon and Cornwall, and of the Manors of Rillaton, Pengelly, Willesworthy and Trivesquite in the County of Cornwall, in his Demesne as of Fee, and had Issue Thomas his eldest Son, William Lovies, Humphrey Lovies and Richard Lovies, (which William afterwards had iffue Leonard the Leffor of the Plaintiff) and the faid Leonard the Grandfather, 26 Septemb' anno 12 Regine Eliz. by his Deed enfeoffed Robert Prideaux Esq; Humphrey Specot Esq; and others, and their Heirs to the Uses and Intents n certain Indentures tripartite of the same Date expressed and declared: That is to fay, Of the Manors of Rillaton, Pengelly and Willesworthy, and of the Manor of Affaland to he Use of Leonard Lovies the Grandfather for his Life without Impeachm, of Waste; and afterwards to the Use of uch Fermors or Ten'ts to whom he should demise any Part f the Premiss. for or during Life or Lives, and for any Term Years, as in any such Demise or Demises should be limitd and appointed, &c, and afterwards to the Use of the Per-

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formance of the Last Will and Testam. of the said Leon. the Grandfather, and to the Use of such Person and Persons severally to whom the faid Leon. the Grandfather by his Last Will should devise any Estate or Estates of and in the said Ma. nors last mentioned, or of any Part of them, according to true Intent and Meaning of his faid Last Will; and after the Performance of his Last Will, to the Use of the said William Lovies, and the Heirs Males of his Body iffuing; and for Default of such Islue, to the Use of Humphrey Lovies and the Heirs Males of his Body lawfully begotten; and afterwards to the Use of Richard Lovies and the Heirs Males of his Body lawfully iffuing; and for Default of fuch Issue, to the Use of Leonard the Grandfather, and the Heirs Males of his Body upon the Body of Ibot his Wife begotten, and afterwards to the Use of the Heirs Females of the Body of the said Leonard the Grandfather; and for Default of such Issue, to the Use of the said Leonard the Grandfather, and his Heirs for ever: And of the Manor of Heanton, to the Use of the faid Leonard the Grandfather for his Life without Impeachment of Waste, and to the like Uses as aforefaid; faving that the said Humphrey. is preferred as to this Manor before William, and then to William, with fuch Remainders over as is aforefaid: And of the faid Manor of Trivesquite to the like Uses as aforefaid; faving that Richard Lovies is preferred to this Manor in Remainder to him and his Heirs Males of his Body before William and Humpbrey, and afterwards to the same Use as aforesaid. In which Indentures there was a Power of Revocation, fc. That if the said Leonard the Grandsther should be minded or disposed to alter, change, or make void the said Fooffment, vel aliquem usum corunden maneriorum, seu aliquem statum vel status qui accrescerent (Anglice) should grow, or should be executed by Reason of any Use or Uses in any of the said Manors, Ge. Or if the faid Leonard the Grandfather should be disposed to have again the faid Manors, or any Part of them; or to give or dispose of the said Manors or any Part of them, in any other Manner than they before are limited; or to have again the faid Manors, or any Part of them, to him and his Heirs, as in his former Effate, and thereupon Leonard the Grandfather by his Writing sealed with his Seal and figned with his own Hand, should notify and fignify his Will and Heafure to the faid Roger and Humpbrey, &c. That then after fuch Notice and Signification in such Writing as aforesaid, fuch and formany of the faid Manors whereof he should make fuch Notice or Signification in fuch Writing, should be intirely

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intirely revoked and utterly void, and should be to the Ufa of the faid Leonard and his Heirs; and that the faid Peoffees then should be seised, &c. to the Use of the said Leonard the Grandfather and his Heirs for ever, Leafes in Form aforesaid to be made, always excepted and reserved. And afterwards, Sc. 26 Aprilis anno 14 Eliz. Regina, Leonard Lovies the Grandfather purchased to him and his Heirs of George Digley Elq; the faid 8 Acres, in which, &c. and afterwards 16 Martin anno 18 Eliz. by his Writing fealed with his Seal, and subscribed with his own Hand, reciting his faid Power of Revocation fignified by the faid Writing to the faid Roger, Humphrey, &c. did revoke and make void the faid Feoffment concerning only the faid Manors of Rillaton, Pengelly and Willesworthy, and the said Manor of Affaland (the Barton there only excepted.) And further declared and fignified to them, That so much and no more of the faid Feoffment and Indentures which contained the faid Premisses (except before excepted) should be utterly frustrate and void. And the said Leonard the Grandfather so being seised of all the aforesaid Premisses as the Law requires, 20 Martii anno 18 Eliz. Regina, made his Last Will in Writing, and devised the faid Acres in which, &c. inter alia to Thomas Lovies his eldest Son, by these Words following. I devise to Thomas Lovies my eldest Son all my Manors, &c. within the County of Cornwall, wherein, or the which I the said Leonard Lovies have or had any Estate of Inheritance, the Lands by me fold only excepted; and also all my Manors, Lands, Tenements, Rents, Reversions, Services and Hereditaments with the Appurtenances, within the County of Devon, wherein or in which I have or had, (besides the Lands by me sold,) any Manner of Estate of Inheritance: Except, and always reserved out of this present Gift, Grant, Will and Bequest, my Manor of Trivesquite within the said County of Cornwall, and all the Messuages, Lands and Tenements in Trivesquite aforesaid, within the Parish of St. Mabin in the said County of Cornwall, and also the Patronage of the Rectory and Parsonage of St. Mabin aforesaid in the said County of Cornwall; and also except, and always reserved out of this present Gift, Grant and Bequest, as well the Barton only of my Manor of Affaland in the said County of Devon, as all my Manor of Heanton, alias Heighaunton, with the Patronage of the Rectory and Parsonage of Heanton, alias Heighaunton aforesaid, in the said County of Devon, and my Tenement called Tenaker in the Parish of Clawton in the County of Devon aforesaid, To have, hold, occupy and enjoy the

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Premisses with the Appurtenances, except before excepted, to my faid Son Thomas, and the Heirs Males of his Body lawfully begotten, from and after my Death for and du-ring the Term of 500 Years then next ensuing, fully to be compleat and ended. Upon this Condition, That my faid Son allow all fuch Estates, Grants and Conveyances thereof already made, or at any Time to be made by me the faid Leon. Lovies, of and in the said Manors, Messuages, Lands, Tenements, and other the Premisses, to him by this my Last Will given, granted and bequeathed, according to the true Meaning, Purport and Effect of the Said Lease and Leafes so made or to be made. Provided always, That if my faid Son Thomas, or any the Iffue Males of his Body lawfully begotten, alien, give or grant the same or any Part thereof to them by these Presents, given, granted and appointed, otherwise than to lease, demise or grant the same or any Part thereof, to any Person or Persons for Term of any Number of Years, as may and shall be determined upon the Deaths of any three Persons, or upon the Death of any less Number of Persons to be named within the said several Leases, Demises and Grants, and whereupon the old and most accustomed Rents and Services shall be yearly reserved, to have Continuance during the same several Leases: That then all the Premisses for Default of such Iffue Males of the Body of the faid Thomas lawfully begot. ten, or to be begotten, or so much thereof as shall be aliened, given, and granted otherwise than as aforesaid, by the said Thomas, or by the said Isue Males, immediately upon every or any such Alienation, Gift or Grant so made or to be made of the Premisses, or of any Part thereof, contrary to the true Meaning of these Presents, Shall remain and come to my Son William Lovies, and to the Heirs Males of his Body lawfully begotten; and for Default of such Issue, or if the said William or any of his Issue Males of his Body lawfully begotten, make any Manner of Alienation, Gift or Grant, otherwise than my said Son Thomas, or otherwise than they may lawfully do by Virtue of the Statute made in the 32 Year of the Reign of King H. 8. in that Case provided, or any of his faid Iffue Males may lawfully do by these Presents; Then all the said Premisses, for Default of fich Iffue, or so much thereof so alienated, given or granted by my faid Son William, or by any of the Iffue Males of his Body lawfully begotten, otherwise than as aforesaid, shall remain and come to my Son Humphrey Lovies, and to the Heirs Males of his Body lawfully begotten, &c.

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And afterwards the faid Leonard Lovies the Grandfa- (a) 32 H.8.c.t. ther died feised of the said eight Acres of Land, in which, Rastal. Wills 2. Sc. and of other the Premisses seised prout lex postulat, 1 Rol. Rep. 65, and that the said eight Acres are held in Socage; and 166, 418.

that the said Tenements devised by the said Will at the 383, 404, 422.

Time of the Death of the said Leonard the Grandsather, 1 Anders. 3, 4, were of the yearly Value of 241. 14 s. 10 d. per annum 34, 47, 146, 147. on ultra; and that the Tenements whereof the faid 85. pl. 88, 127. Feoffment was made, and not revoked at the Time of pl. 52, 143. pl. the Death of said Leonard the Grandfather, were of the \$3,54,150. pl. yearly Value of 55 l. 65. 8 d. And that the said Manor 286. pl.46,308. of Trivesquite only is held by Knights Service in Capite, pl. 74, 313. pl. and that the said Leonard the Grandsather had not any 93, 329. pl. 16, other Lands, and that Thomas Lovies after the Death of 354. pl. 34. the said Leonard the Grandfather entred into the said eight 209. 1Brownl. Acres, in which, &c. and died without Heir Male of his 44. Cr.El.100, Body, having issue, Julian his Daughter, who took to 1 Leon. 113. Husband Robert Doily Esq; who entred into the said eight 2 Leon. 305. Acres, in which, &c. And that the faid William Lovies 3 Leon. 79. died, having Issue the said Leonard Lovies in the Writ Swind. 28, 29, and Declaration mentioned, who entred into the said eight 30, 31. Benlin Acres, in which, &c. upon the Possession of the said Ro-Ash. 81. N. Benl. bert and Julian, and demised to the Plaintiss the said 3 Co. 31. b. 33 b. eight Acres, in which, &c. as in the Declaration is alledge—Wentw. 10. del, who entred; upon whom the Defendant by the Com-Jenk. Cent. mandment of the said Robert Doily and Julian his 215,233. Plow. mandment of the said Robert Doily and Julian his 68. b. 564. 2.
Wife, did enter and eject him. And if the Entry of the Br. N. C. 486. Wife, did enter and eject him. And if the Entry of the 3 Keb. 554. faid Leonard Lovies the Lessor was lawful or not, was the 3 Keb. 554. Co.Lit.76. a. b. Question, &c.

Question, &c.

After that this Case (being of great Difficulty and Con-99.2. Hob. 80, Aquence) had been often argued at the Bar; for it began 122. 2 Brownl. Trin. 8 Jac. Regis, Rot. 4251. This Term it was argued Raym. 112. by the Justices, and it was concluded, That Judgment Style 391. should be given against the Plaintiff, because the Entry of Godb. 394. the said Leonard Lovies the Lessor was not lawful. And Moor38.pl 124, in this Case divers Points were moved and resolved by the 177. pl. 313, Court; some upon the Statutes of (a) 32 8 34 H. 8. of 314. 254. pl. Wills; and some at the Common Law. Upon the said Sta-pl. 401, 341, 342. Wills; and some at the Common Law. Upon the said Sta-pl. 463, 726, tutes, 1. If a Man be seised of three Acres of equal yearly 727, 734, 837. Value, one of them being held of the King by Knights Poph. 89, 90. Owen 155, 156. Service in Capite, and having Issue two Sons, gives the 1 Bullet. 62 Service in Capite, and having Issue two Sons, gives the 1 Bulitr. 62. Acre so held, and one of the other Acres to his younger 3 Bulltr. 184. Son in Tail; by which he has so executed his Power, that 2 Co. 25. b. he can't devise by his Will any Part of the third Acre; and 16.b.76.a.b. 77. afterwards he purchases other three Acres of equal annual a. 8Co.84. a. b. Value held in Socage: Now he having the Reversion in 85.a. 163.b. Fee expectant on the Gift in Tail (made to his younger 9 Co. 126. a.b. Son) and the three Acres newly purchased held in Socage, 133.b. 10 Co. can devise but two Parts of the said Land newly purcha
157,625. 1 Co. sed, in respect of the said Reversion: But against that two 25.b. Cr.

Car. 34.

Objections were made, r. That the Reversion depends upon the Estate which was given in Tail, according to the Power and Authority given him by the Acts of 32 & 34 BE 8. to the younger Son, upon which Wardship or primer Seifin is faved and given by the faid Acts to the King, That the faid Reversion depending upon the faid Estateit shall not hinder the Devile of the other Lands held in Socage purchased asserwards, because the King is once fawhereof Part is held by Knights Service in Capite, to the Use of his older Son and the Heirs Males of his Body, and afterwards to the Use of his younger Son in Tail or in Dec, and diesy if the King be once fatisfied of the Wardship or Primer Seifin after the Death of the Father, and afterwards the elder Son dies without Issue, he shall not have another Primer Seifin after the Death of the Bider, as it has been often resolved, for the faid Statutes were failed with the first, so in the Case at Bar; the faid Statutes once wrought upon the Gift in Tail of the Acre in 8 Ca 165 & Dy 308 ph742 Capite, and therefore the Reversion of the same Acre shall not selfrain the Devile of the Lands held in Socage newly purchased. 2. The faid Reversion is (b) fruitless, and not of any yearly Value, as long as the Estate-tail continues, and therefore is not within the faid Acts, for they do not extend to such Hereditaments which are not of any yearly Value, as it is resolved in Butler and Baker's Case, in the third Part of my Reports, fol. 25. But it was refolved, That (c) II Co. 27, the faid Rev'n (c) expectant upon the Estate-tail did restrain the Devise of the whole Socage Land newly purchased by the express Letter of the Act 34 H. 8. 5. And further by in declared and enacted, That all and singular Person and Persons boving a sole Estate, &c. in Fee-simple, &c. of or version or Remainder, &c. bolden of the King by Knights Service in Capite: So that without Question the Devisor has an Effate in Reversion of the Lands so held, and by Consequence he can devise but two Parts of the Lands newly purchased. And as to the Case which has been put, that the younger Brother in Remainder, after the King has (d)Co.Lit.78.a. been once (d) fatisfied by the elder Brother, shall for fue Li-Dy.308. pl 74. very ; it was agreed for good Law, because in such Case the Words and Meaning of the Stat. is fatisfied, and the younger Son claims by Furchase, and not as Heir to the elder Son, and therefore after his Death he can't be in Ward, or pay

Primer Seifin. And therewith agrees 14 Eliz. Dyer 340

and Matt. Mene's Cafe in the 9 Part of my Reports, f. 133. a.b.

And Coke Chief Justice faid, That it was resolved in the K.'s Bench, Hill. 35 Eliz. Regina in Clement Howard's Call

Cr. El. 350.

(a),2 Ca. 99.b

Co. Lit. 78. 2

(6) Co. Lit.

111. b.

(e) Dyer 308. Pl. 74.

That if a (a) Man feised of Lands in Fee, Part of which is (a) Co. Lic. neld of the King by Knights Service in Capite, conveys two Parts of them to any of his Sons, or to the Use of his Wife or Life, or in Tail, in such Case he may by his Will devise he Reversion of the two Parts, altho' the Statute be in the Disjunctive, by Act executed, or by his Will, yet the Intent of the Act was, that he should have Power to dispose two Parts (b) entirely as to all Estates, and to leave only the 3d (b) Co. Lit. art to discend, and that appears by the Words of the Stat. 111 b. f (c) 34 H. 8. sc. to give, dispose, will or assign by his Will, (c) 34 H. 8.c.s. ast executed, by himself solely, &c. or by all these ways or ny of them; which is as much as to fay, either by Will, or Aftexecuted, &c. or by em both, and as to the faid Words the Statute in Possession, Reversion or Remainder. It was folved, Where the faid Leonard Lovies had a Remainder Tail expectant upon the Estates in Tail limited to his ons, that (d) fuch Remainder was not within the faid Act. (d) Moor 837. d therefore if A be seised of Lands held in Socage, and leifed of Lands in Fee held by Knights Service in Capite, akes a Leafe for Life, or a Gift in Tail to C. the Remainder to A. in Tail, or in Fee; A. by his Will devifes all his Land held in Socage, and dies, living the Leffee for Life, or luring the Gift in Tail, the Devise is good for all the Lands eld in Socage, for such Remainder is not within the Inndment of the Statute, but only such Remainder which may draw Wardship and Marriage by the Com. Law. As if Man makes a Lease for Life or for Years, and afterwards ants the (e) Reversion for Life or in Tail, the Rem'r in e, and afterwards the Grantee for Life dies, or the Doe in Tail dies without Issue, such Remainder which is win Point of (f) Reversion, is within the Stat. for it will (f) Raym 41 the Com. Law draw in such CaseWardship and Marriage, Co. Lit. 111.b. c. And that it ought to be a Remainder of such Nature. pears by the Words-of the faid Act it felf next following, if any Rents or Services incident to any Reversion or emainder; for no Rent or Service can be incident to any. emainder but of fuch Nature.

As to the 2d Objection, It was resolved, That there was a ifference bewixt (g) Hereditaments which of their Nature (g) Co. Lit. e not of any annual Value, as bona & catalla Felon & Fu- Postea 82. 2. tivor' Waif, Stray & Similia. Vide for that in Butler and aker's Cafe, f. 32. b. and the notable Opinion of Prifot h. Just. in this Court, in 32 H. 6. 22. 4. upon the Stat. (b) 1 H. 4. c. 6. and Things which of their Nature are of (b) Raft. Pat. 4. annual Value, but in respect of a Gift or Lease, absque Co. Lit. 133. a. iquo inde reddendo, they are not of any present Value,

(e) Co. Lit.

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as in the Case at Bar, altho' the Reversion in presenti is not of any annual Value, yet the Land it felf is of an annual Value, and therefore such Reversion is deviseable, as it was resolved by Popham and Anderson Chief Justices in the Court of Wards, Trin. 34 El. in Bedingsield's Case; where the Case was, That Edm. Bedingsield of Oxborough in the County of Norfolk Esq; was seised of 6 Manors in the Counties of Norfolk and Suffolk, s. of one in his Demesn as of Fee, and of the others in Tail, with the Reversion expectant to him and his Heirs, and had Issue Thomas Bedingfield; divers of which Manors were held of the Q. by Knights Service in Capite, and every one of em of equal annual Value; the faid Edmund by his last Will in Writing devised all the faid Manors to divers Persons and their Heirs, upon Trust and Confidence for Payment of his Debts, and Advancement of his Children, and died; and the Estate in Tail which descended to his Issue, was more than the third Part of the Whole: Now the Question was, If the faid Devise should be void for a third Part of the Manor in Poffession, and a 3d Part of the Reversions in Fee; or if it should be good for the whole Manor in Possession, and for the entire Reversions, or if it should be good for the whole Manor in Posses, and 2 Parts of the Reversions; and those Doubts arose upon two Branches of the said Statute of 34 H. 8. the first is in these Words, All and singular Person and Persons baving a sole Estate in Fee-simple in Possession, Reversion or Remainder, holden of the King by Knights Service in Chief, shall have full Power, &c. to dispose two Parts: By which Clause it seems the Devise should be void for the third Part of the Manor in Poffession, for the Devisor had a sole Estate of the Reversion in Fee held by Knights Service in Capite. The fecond Clause was, And that the King Shall have, &c. for bis third Part, &c. such Manors as shall descend as well in Tail as Fee simple; and that the Will of every such Devisor of and for the two Parts of the faid Manors Residue, Shall stand good, albeit the Will be made of all bis Fee-simple Lands. By which Branch it feems clearly, That if the Devisor had not any Reversion in Fee but only the said Estate-Tail, that the Devise should be good for all the Manor in Possession, but the having the Reversion upon the Consideration of the faid former Claufe, made the Question : And it was questio tortuosa & difficultatis plena. In which Case it was first resolved by the two Chief Justices, That a Rever-fion in Fee expectant on an Estate-Tail seck and fruitless, was within the faid Act, for the Cause and Reason aforesaid. 2. It was refolved, That the faid Devise should be good for

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Co. Lit. 111. b. two Parts of the Reversions, and for the whole Manor in Posses

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Possession, and that by the Meaning of the Makers of the Act upon both Branches, to the End the Debts of the Devifor should be paid, and his last Will performed, which was one of the principal Motives of making the said Act; and sic determinata fuit spinosa illa questio. Vide (a) 14 (a) Dyer 308. Eliz. Dyer 308. The Lord Paget being the Queen's Te- pl. 74. nant by Knights Service in Capite, levied a Fine to the Use 2 Co. 94 a. of himself for Life, and afterwards to the Use of his elder Son in Tail, and afterwards to the Use of his younger Son in Tail, and afterwards to the Use of the right Heirs of the faid Lord Pager, and died; the elder Son of full Age fued Livery, and paid the Value of the third Part of the Land in Poffession, and the Moiety of the Reversion in Fee, according to the usual Rate: Which proves, That the Acts of (b) 32 & 34 H. 8. being in the Affirmative; and which (b);2H.8cap.t. give the King Benefit in respect of the Possession, take not 34 H. 8. cap. 1. away fuch Benefit which the Common Law gave the King for the Reversion of the same Land.

It was also resolved, That altho' (c) Hereditaments which (c) Co. Lic. of their Nature are not of any annual Value can't be devised, 111. b. yet if they be held in Capite, they shall restrain the Devise 3 Co. 32. b. of Manors, Lands, &c. and shall make them void for a 3d Part, for the Hereditament held by Knight's Service in Capite, need not be deviseable. And the Chief Justice in his Argument for the more Perspicuity, divided the said intricate and prolix Acts into several Branches: The first Branch out of the said Act of 34 H. 8. which has been mentioned before, All and singular Person and Persons having a sole Estate in Fee-simple, &c. of and in any Manors, The 2d, Holden of the King by Knights Service in Chief. The 3d is out of the Act of 32 H. 8. Saving, &c. to the King the Custody, Wardship, or Primer Seisin, the clear yearly Value of the third Part of the same Manors, Lands, &c. The fourth Clause is out of the Statute of 34 H. 8. May give, dispose; will or assign two Parts of the same Manors, &c. The fifth Clause is out of the Act of 34 H. 8. That the K. shall take for his full third Part, &c. fuch Manors, Lands, &c. as shall descend as well of Inheritance in Fee-Tail as Fee simple. And out of these several Branches 6 Times were observed; for (4) Judicis officium est, ut res, ita tempora rerum Que- (d) 10 Co. rere, quesito tempo' tutus eris, and omnia tempus habent & ba-127: b.
bet sua tempor a tempus. The first time is tempus habendi; eve3 Bulst. 170.
by Person having, &c. The second Time is tempus tenendi, holden of the K. &c. The 3d Time is tempus disponendi, may gree, dispose, &c. and it is to be known that by such Dispo-

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fition there is a Vesting either in the Subject or the King, in the Subject, either by Act executed by the Com. Law in the Life of the King's Tenant, or by last Will, which vests only by Force of these Acts; in the King, only by the Death of his Tenant, for then Wardship or Primer Seisin vests in him. The fourth Time is tempus appretiandi sew astimandi, the clear yearly Value, &c. The fifth Time is tempus providendi, plenam tertiam partem, to descend in Fee or in Tail, a full third Part, &c. to descend or come by descent, as well of Estate of Inheritance in Fee-Tail as in Fee-simple. The fixth Time is by Construction on all the Parts, s. tempus continuandi, seu tempus continuum.

And it was held, That the faid three former Times ought to concur, sc. the Time of baving, the Time of bolding, and the Time of disposing ought to concur together; and therefore if a Man be feifed of an Acre of Land in Fee held of the King by Knights Service in Capite, and of other two Acres in Fee held in Socage, and the Tenant enfeoffs his younger Son of the Acre held in Chief, and of one of the other Acres, To have to him and his Heirs; and afterwards he purchases Lands held in Socage, that in this Case he may devise all the Lands newly purchased held in Socage, and that for three Reasons. 1. Because he had no Lands held by Knight Service in Capite at the Time of the Devise, for the faid Acts have made a Marriage or Conjunction of the Lands which the King's Tenant had in Socage, with the Lands which he held of the King by Knights Service in Capite; for the Words of both the Acts are, Every Person, &c. baving Manors, Lands, &c. may give, dispose, &c. two Parts of the same Manors, Lands, &c. And the Saving in the faid Act of 32 H. 8. is Saving a full third Part, &c. of the same Manors, Lands, &c. so that when the Tenant has conveyed the Lands held in Capite to his younger Son, now when he makes his Will of the Lands newly purchased, he has no Lands held of the King in Capite at the Time of the Devise, and the Statutes restrain only the Lands in Socage, which he had at the Timed the Having of the Lands held in Capite. 2. The faid Alu give him full Power and Authority to give, diffoli, will or assign two Parts for the Advancement of his Wife, Preferment of his Children, or Payment of his Debts: So that when the Stat. has given him Power to convey two Parts (whereof the Land held by Knight Service in Capite is Part) the Intention of the Makers of the Acts hever was to prefume him, who has according P

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the Act conveyed the Land, to have the same Land for any Intent or Purpole; and as it is resolved in Might's Case in the 8th Part of my Reports, Trin. 7 Jac. fol. 194. Land which is conveyed to one of the said three Ends can't be said (a) covinous, because it is warranted by the Act. 3. The (a) 8Co.163.b. great Benefit which the King has by these Statutes was ob- 164.2. served, for the King's Tenant in Capite before these Statutes 2 lost 110. might have so conveyed the Land to any of the said three Uses, that the King should never have (b) Wardship nor Pri- (b) Co Lit. 78 mer Seifin, as appears in Sir Geo. Curson's Case in the fixth 6 Co. 76. a. Part of my Reports f. 75. b. And therefore it would not be 2 Inst. 110, reasonable to interpret the Statute in Prejudice of the Sub- 111, 112. ject against the express Letter, s. by Saving a 3d Part of the fame Lands which the King's Tenant then had, to extend it beyond the Words to Lands held in Socage, which he purchased after he had conveyed over the Land in Capite. the greater Question was, That if Leon. Lovies the Grandfather had conveyed (as was admitted) the Land held by Knt's Service in Capite to Wm. Lovies his 2d Son in Fee, &c. with Power of Revocation; fo that he had Power over the Land, and might dispose of it, if that should restrain the Power of Leon. Lovies to devise all the Land in Socage newly purchated. But the Ch. Justice held it all one for the Reasons and Caules aforesaid; and eo potius, because the Statutes gave him Power to give, dispose, &c. two Parts, &c. at his Will and Pleafure; so infomuch as his Will and Pleasure appears to convey the Land to William, as is aforefaid, with Power of Revocation, he thereby purfues the Power which the Statutes give him, quod Nichols Just. concessit. And as theseSta. tutes have been put in Ure according to the express Purview, altho Damage has accrued to the Subject, as in Vincent's Case briefly vouched by the Lord Dyer, 22 El. 367. It was refolved, That (c) if the King's Tenant by Knights Service (c) Co. Lit 78.b. in Capite conveys the Lands to the Use of his Wife and her Cr. Jac 157. Heirs, or to the Use of his youngest Son and his Heirs, and Br. N. C. 354. dies, his eldest Son within Age, that altho' the Eldest Son be difinherited, yet afflictio addetur afflicto, he shall be in Ward to the King, altho'he has nothing by descent, by the 'd Co.Lit 78.a. express Purview of the Statute: So no Interpretation shall (c Co.Lit.3.b. be made for the Benefit of the King against the expres 123. a Purview; and therewith agrees Wray C. Just. in Butler and lenk. Cent 239. Baker's Case 31. b. And therefore if a Woman the K.'s Te- Poph. 188. pant in Capite has Issue a (d) Bastard Daught. and conveys Goldbs. 191. the Lands to her (e) Bast. Daugh: and dies, the K. shall not Moor 430. have Wardship; for if it be within the Statute of 32 H. 8. Noy 35. it ought to be a Child in Law and Truth, and not in Ander. 79. M 3 Reputation

2 Inft. 110.

C. El.358 509.

6Co 77.2. (b) Dy. 296. Hob. 308. Goldsb. 93. Godb. 315. Cr. Jac. 608. 1 Jones 2, 3, 160. 11 Co. 13. 2. (d) Dy. 368. pl. 47. 4 Co. 106. b. Jenk. Cent. 245. 1 Rol Rep. 417. Hugh's Abr. 1717. 11 Co. 13. a. (e) Palm. 214.

(a) Dy. 345. pl.4. Reputation, as it is refolved in Thornton's Cafe M. 17 & 18. Co. Lit. 78. a. Fl. Dy. (a) 345. Vide 12 Fl. (b) Dy 206. and yet a Chan El. Dy. (a) 345. Vide 12 El. (b) Dy. 296. and yet a Chantry in (c) Reputation was adjudged within the Act of 1 E. pl. 23.
6. c. 14. 22 El. Dy. (d) 368. in the Dean of Paul's Case.
(e) 2 Rol. Rep. And the Chief Justice said, That it was resolved in the Court of Wards, Trin. 25 El. That Where Sir Nicholas (e) Strange Knight was the King's Tenant of the Manor of Hunstanton, and of divers Manors, Lands and Tenements held in Capite in the County of Norfolk, and Hamond 4 Leonard 159, Strange his eldest Son and Heir apparent purchased the faid Manors, Lands and Tenements of him bona fide for Money, and the faid Sir Nicholas died, the faid Hamond of. full Age, and this Matter was found by Office; and it was resolved by Wray and Anderson Chief Justices, That he 108. 2. Should not pay Primer Seifin, for the Words of the faid State Leon, 156 &c. Should not pay Primer Seifin, for the Words of the faid State Leon, 156 &c. Should not pay Primer Seifin, for the Words of the faid State Leon, 156 &c. tutes are give (which implies to be done ex mera liberalitate & voluntate : Vide Bracton, lib. 2. c. 5. f. 11.) and altho the Words are, diffese and assign, yet the Conclusion is for the Preferment of his Children, &c. and Purchase can't be called Preferment, for every Preferment ought to be also Co. Lit. 78. 2. ex mera liberalitate & Spontanea voluntate, and accordingly it was resolved (as then it was said) in Porrige's Case in an. 12 El. And Randal's Case in 4 & 5 P. & M. Dyer 158. was cited by every one of the Justices in the Argument of this Case. (f) A Man seised in Fee of Land of Socage Tenure affures it to the Use of his Wife for her Jointure in ann. 32 H. 8. and afterwards in ann. 2 E. 6. he purchases 2 Brownl. 105. Lands held by Knights Service in Capite, and of two Parts thereof makes his Will and dies, his Heir within Age, and if the Queen should have any of the Socage Land to make a full third Part of the Whole, was the Question: And refolved she should not, for the Words of the Act of 34 H. 8. of Explanation are, and having no Lands holden by Knights Service, which proves, that the Time of having, holding in Capite by Knights-Service, and of disposing, ought to con-(g)Co.Lit.78.2. cur. And a (g) Difference was taken and agreed betweens Disposition, by act executed in the Life of the Devisor, and by his last Will in Writing : And therefore if a Man feifed of Lands held in Socage of the yearly Value of twenty Pounds per annum, and has no Lands held in Capite by Knights Service, and makes his Will in Writing, and thereby devises the Socage Land to another in Fee, and afterwards he purchases Lands held by Knights Service in Capite, of the yearly Value of twenty Shillings, and

dies, this Devise shall not be good for all the So-

cage Lands, for nothing is disposed or transferred of

ver by the Will, till the Death of the Devisor, and there was an Union of the Land held in Capite,

(f) Dyer 158. pl. 33. 3 Co. 30. b. 6 Co. 76-a.

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having, holding and disposing concur'd, and therewith agrees the Opinion in Butler and Baker's Cale. So, and for the same. Reason it is there held, That if a (a) Man be seised of Lands (a) 2 Co. 35.2. held by Knights Service in Capite, and of Lands held in So- Co. Lit. 111. b. cage, and by his Willin Writing devises all the faid Lands, and afterwards aliens the Lands held in Capite, that this Devise is good for all the Land in Socage; and many other Cases to the like Effect put in Butler and Baker's Case which you may see there. And where the Stat. of 34 H. 8. faith, two Parts as well of the said Manors, Lands, Tenements, Rents and Hereditaments, as of all and singul. his other Rents and Hereditaments; these last Words, as of all and singular his other Rents ought to have Reference to the Beginning of the Sentence, fc. having a sole Estate, &c. of or in any Manors, Lands, &c. holden in Capite. For if he has no Land in Capite, he is not restrained to devise but two Parts, for then he may devise the Whole: But these Words were necessary to be added, for the Beginning of this Branch extends only to enable the Tenant to devise, &c. two Parts of the Lands held in Capite only; and therefore it was necessary to add, Asalfo of all and singular his other Rents and Hereditament not holden in Capite by Knights Service: But all the Words together prove (as has been faid) that the Time of having, holding and disposing ought to concur. As to the 4th Time, sc. From what Time the Value of the Lands whereof the King shall have the third Part shall be taken, it was refolved, that the Value of the Lands shall be taken as they are at the Time of the (b) Death of the K.'s (b) Co. Lit. Tenant, for then by the Saving in Case of act executed, the 111. b. Title of Wardship and Primer Seisin vests in the King; and in Case of Will it also takes Effect for two Parts by the Death of the Tenant, and the third Part descends to the Heir, of whom the King shall have the Wardship or Primer Seisin; so that tempus appreciandi ought to concur with the Time of the Death; but the Time of vesting in the Subject by act executed, and the Time of Value, do not concur. And the Resolution of Virgil (c) Parker's Case in (c) 8 Co.173.b. the eighth Part of my Reports, the last Case, was cited and Co. Lit. 76. b. agreed to be good Law: Where the Case was, That Virg. Parker was seised of the Manor of Fushil in Fee, held of the King by Knights Service, as of his Dutchy of Lancaster, anno 27 El. made a Feoffment of half of the Manor to the Use of himself for Life, and afterwards to the Use of Mary, whom he intended to marry, for Life, with divers Remainders over; he married Mary Cony, and afterwards devised the other half to divers, for Payment of his Debts and Legacies, and died: And it was relolved,

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(a)8Co.173.b. 9 Co. 113. b.

within the Statute, as Payment of his Debts, and the Stat. (as to Value) principally takes its Effect by the Death of the King's Tenant; for this Cause, altho' the Estate of the Wife has the Precedency, it was resolved, That the 3d Part of the King should be taken (a) equally out of both Halfs, and not out of the Half so devised only, and accordingly, as it appears there, it had been resolved divers Times before. As to 3. Time, sc. To provide a 3d Part to descend, it is to be known, That if a Man seised of certain Lands, Part of which is held in Capite by Knights Service of the yearly Value of 601. per ann. all which Lands he conveys to one of the faid three Ufes, and afterwards purchases Land of the yearly Value of 20 l. or more, in Tail or in Fee, and leaves it to descend for the 3d Part due to the King, it is good enough, for this Time to provide a 3d Part, need not concur with the Time of baving, bolding or disposing by Act executed; but it is fufficient if this Time concurs with the Time of the Value, fc. the Time of the Death of the K.'s Tenant; and this appears by the express Words of the Act of 34 H. 8. s. That the K. Shall take for his full 3d Part such Manors, Lands, &c. as shall descend in Fee-Tail or Fee-simple, without any Words of Reference or Restraint, or any Union made of these Lands which descend with the Land held in Capite by Knights Service, as the other Clauses aforesaid are. As to 6. Time, sc. tempus continuum, to some Purpose Time ought to continue usque ad mortem, and in some Case post mortem; usque ad merten, he Estate conveyed to any of the faid three Purpoles, ought to continue till the Death of the King's Tenant, as it is resolved in (b) Bingham's Case; in (6) Moor 607. Jenk. Cent. 267. the fecond Part of my Reports f. 91. a. b. Post mortem, 1. The Tenure by Knights Service in Capite ought to continue post mortem, for if the Tenure be but during the Life (c) 3 Co. 34. b. of the Tenant, so that it doth not continue after his (c) Death, it will not restrain the Devise of the other Lands, as it is held in Butler and Baker's Case. 2. The Estate of the Land held ought to continue after the Death of the Tenant; and therefore if Tenant in Tail be to him and the Heirs Males of his Body, the Remainder in Fee to another, of Land held by Knights Service in Capite, and he is seised of other Lands in Socage in Fee, and by his Will in Writing he devises all his So-cage Lands, and dies without Issue Male, in this Case the Devise is good for all the Socage Land, for the Estate of the Land held determined by his Death, fo that there was no Caufe of Wardship at the Common Law. The same Law, if the Estate of the Land held be defeated by

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by ndiCondition after the Death of the Tenant. Vide 13 Eliz. (4) Dyer 298. (a) Dyer fo. 3. The Privity of the Heir of the Ten't ought 1 Co. 133. b. to continue after his Death; and therefore if the King's i Keb. 800. Tenant in Capite conveys all his Land to any of the faid 2 Keb. 145. three Uses, and is afterwards attainted of Treason, and after- 248. a. wards he dies his Heir within Age, in this Case the King 2 Rol. 39. shall not have the Wardship, because he dies without Heir 2 Rol Rep. 469. in Respect of the Corruption of Blood, (b) as it was re-(c) Baker's folved in Sir Everard (c) Digby's Case, Mich. 7 Jac. in the Chron. 433.

eighth Part of my Reports, fol. 165. h. 1. If the Uses limited by the said tripartite Indentures Questions at to William Lovies in Tail, with the Remainder over, are the Common in Contingency or not? Or if the Uses be immediately ex- Law. ecuted by the Statute of * 27 H. 8. of Uses in William * 27 H. 8. c. 10. Lovies with the Remainders over? And the Chief Justice held, That the Uses were in (d) Contingency, and not ex- (d) 1 Rol. Rep. ecuted till the Death of Leonard Lovies the Grandfather, 436. for when he has by the faid Indentures limited to himself Lit. Rep. 219. an Estate for Life, and upon the Matter Power to make Leafes for Life, Lives or Years, without any Restraint of Lives or Years, then when the Limitation is farther to the Use of the Performance of his Last Will and Testament. and to the Use of such Person and Persons severally, to whom

he by his Last Will shall devise any Estate or Estates, by these Words, without Question he may devise the said Land to any Person in Tail or in Fee, (for he has Power before to make Leafes for Lives or Years, without any Limitation) and by Confequence the Use limited to William Lovies in Tail, with all the Remainders over, are in Contingency. For where it is (e) doubtful and incertain whether (e) 2 Rol. 419. the Use or Estate limited in futuro will ever vest in Estate: 3 Co. 20. 2. or Interest or not, there the Use or Estate is said to be Raym. 144. in Contingency, because upon a future Contingent it may either vest or never vest, as the Contingent shall happen; and therefore there is a Difference betwixt such a Contingency as aforefaid, and a Limitation of Estates by Words of Contingency, which extend upon the Limitation of former Estates, and which vest in Estate or Interest immediately to take Effect in Possession in future, as in 5 E. 3. 27. (f) William leases to John for the Life of John, (f) 2Bulltr. 130; tendring to William 40 s. Rent during the Life of Wil-Lit. Rep. 316, liam, and after the Death of William to John and his Herl. 67. Heirs, this Remainder to John can't vest immediately, because peradventure it will never vest in Estate or Interest, and the Continued in the Conti

rest, and the Contingent in this Case is the Time of

the Death of William, for if William dies, John living,

the Remainder is good, but if William furvives John

Wilson's Hift.

(b) Cart. 203. Bulltr. 130. Lit. Rep. 258, 289.

(a) Plowd. 33.a. and dies after him, the Remainder is void. Vide (a) Plo. Com. in Colthirft's Cafe. Pafch. 36 Eliz. Rot. 348. inter (b) Acton and Hore in the King's Bench, the Case was; That a Fine was levied to the Uses of A. and the Hein Males of his Body, till he or the Heirs Males of his Body has done fuch a Thing, and after fuch Thing done to the Use of another in Tail, and dies without Issue without any Thing done: It was adjudged, That the Remainder was in Contingency, and never fell. If a Man has made feveral Leafes of two feveral Acres of Land for two feveral and diffinct Terms, as well in the Commencement as in the End, and afterwards makes a Lease of both Acres. to begin after the Determinations of the faid several Terms for forty Years, it shall not expect to begin after the last (c) Cr. Jac. 259, Lease, but (c) shall vest immediately in Interest reddendo singula singulis, as it is adjudged in Just. Windham's Case I Saund. 184. 2 Rol. Rep 284, in the fifth Part of my Reports. f.7. b. (& vide (d) 6 E. 3. 53. a good Case. Vide (e) Boraston's Case inter Hinde and Ambry in the third Part of my Reports) for it vests immediately in Interest, to begin in Possession after the De-Moor 191. mediately in Interest, to begin in Ponession after the De-(d) 2 Rol.Rep. termination of a former Term for Years. But in the Case at Bar, nothing can vest by the Devise to William Lovies, nor the Remainders over till the Death of the Devisor,

3 Keb. 85, Palm. 390. Palm. 390. (e) 3 Co. 21. a. Cr. Jac. 461, 510. Palm. 141.

(f) 6 Co. 18. 2. Co. Lit. 111. b. Lit. Rep. 288, 321. Moor 493, 567. Cr. Car. 39.

any Estate, be it in Fee-simple if he will: Ergo, it can't vest immediately in William Lovies, and by Consequence in none of the Remainders; upon which it follows, that in the mean Time the Use of the Fee vests (f) again in Leonard the Grandfather, (as it was adjudged in Sir Ed. Clere's Case) and then he was seised of Lands held in Capite at the Time of the Purchase of the said eight Acres in which, &c. And for this Cause, he having disposed two Parts by A& executed according to the Statute, he can't devise the faid eight Acres. For it appears by the Record, that he has conveyed by the Feoffment, Lands and Tenements of the yearly Value of 55% 6s. 8d. and the Land mentioned to be devised is but of the Value of 241. 145. 10 d. per Annum, and the Feoffment can't extend to the faid eight Acres, for they were purchased after; but being a Last Will shall be Direction to declare Uses upon the Feoffment, and when the Land shall pass by the Will it felf, and when by the Feoffment. Vide the faid Case of (8) Jenk. Cent: Sir (8) Ed Clere. But against this it was objected, That the Fee which Leonard the Grandfather had by Operation of Law, vanished by his Death, in as much as he

it was answered and resolved, That the said Reversion

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because he has Power by his Will to devise to any Person

Cr. El. 877. Cr. Jac. 31. tion of Law, Moor 476, 567. made no Disposition of the Land in Fee-simple by his Co. Litt. 111. b. Will, which was granted as had been resolved before. But Co. Litt. 111. b. Will, which was granted as had been resolved. That the said Reversion X,

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in Fee expectant upon the Estate-tail, did not vanish, as fully appears. Another Objection was made, That forafmuch as the Words of the Statutes of 32 & 34 H. 8. are, Lawfully execute in his Life, &c. in this Case forasmuch as the faid Uses were in Contingency, no Execution of any Estate was, but after the Death of Leonard the Grandfather, and fo out of the Statute. To which it was answered, That after the Death of the Leonard the Grandfather, the faid Estates were derived, and took their Essence and Effect by Force of the faid (a) Feoffment made, and (a) 6 Co. 18. 2. fo upon the Matter executed in his Life. Also it was held Co. Lit. 111. b. by the Chief Justice, That the Remainder to William Lo- 2 Brownl. 52. vies by the Will is contingent, forafmuch as no Alienation 1 Bulftr. 200. is found to be made by Thomas; for in Effect it is a Devise Cr. El. 878. to Thomas and his Heirs Males; provided, that if he aliens Hob. 160. it, that then for Want of Issue Male of his Body, it shall Moor 262, 567. remain to William, &c. So that there are two main Impediments to the Remainder, sc. that there was no Alienation, and if there had been an Alienation, then also it would be repugnant, that after the Alienation the Land should remain to William, and so quacunque via data the Remainder as this Case is doth not vest in William. And the feveral Pennings of the Devise to Thomas with Contingency to remain over to William, and of the Devise to William and the Remainder over were observed, which prove feveral Intents in the Testator, as appears in (b) Lar tobe 246, 278.

Case, in the fifth Part of my Reports, fo. 118. a. b. upon Lit. Rep. 93.

the Statute of (c) 32 H. 8. of Rents. But this Point was (c) 32H.8. c.37.

Another Point at the Common Vaugh. 48. Law was also moved in the Case, sc. Whether the said Re-Rast. Rents 2. vocation mentioned in the Record, was sufficient or not: Co.Lit. 162.2.b. Touching which, there are three Things to be confidered, 351.b. 1. His Power reserved to him by the Proviso of Revocation, 4Co.48.b. 50.a. 2. In the Revocation if he has pursued his Power; First, the 8Co 64.b. 65.a. Words of the Power divide themselves into five Branches. 7 Co. 38. b.

1. That if the said Leonard Lovies shall be disposed to Cr. El 805. alter, change, or to make void pred feeffamentum, &c. Goldsb. 30. 2. Vel aliquem usum seu usus, &c. superius limitat, 3. Vel 1 Anders 47. aliquem statum vel status qui accrescerent seu execut forent Co. Entr. 119. ratione alicujus usus, &c. 4. Aut si præd Leonard Lovies 1 Leon. 302. Avus disponeret' rehabere omnia & singula præd' Maneria, 2 Leon. 153. &c. vel aliquam partem eorundem, 5. Vel eadem Maneria 3 Leon. 59. vel aliquam partem eorundem disponere vel donare in aliquo alio modo, vel eadem aut aliquam partem eorundem rebabere eidem Leonard' & Hered' suis, ut in pristino statu Suo, &c. & Superinde Significar' voluntat' & beneplacit' fuum inde to the Feoffees or any of them, &c. qd' tunc immediate, Sc. the Manors, Sc. should be to the Use of Leonard the Grandfather and his Heirs, ut in pristino statu suo.

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Then the Revocation stands upon two Parts: 1. He fignifies to the Feoffees that fo much of the Feoffment and Indentures which concerns certain Manors shall be void, which was objected can't be, because the Indenture was made 26 Sept. anno 12 Eliz. Regine, and the Feoffment was made 28 Sept. following, and therefore the Indenture precedent can't avoid the Feoffment which passed by Livery Subsequent. Also he declares, That so much of the Feoff. ment and Indentures, and no more, as concern only Parcel of the Premisses, shall be void; and admitting that the Feoffment and Indentures may be avoided, and made void in all, yet they can't be avoided in Part, s. the Deed of Indenture quoad one Manor to be made void and to lose its Force, and quoad another to fland as a Deed, and of fuch Effect, as it was objected, is the second Branch, s. I will that so much and no more of the said Feoffment and Inden-tures, and every Clause and Article therein contained, to be atterly frustrate and void, &c. 3. The Nature of the Things to be revoked was confidered, That all the Declarations and Limitations of the Uses in the Indenture at the Time of the Deed of Revocation, were only in Contingency, and nothing in Estate in Possession, Reversion, or Remainder or in Interest, but only in Possibility, which can't be revoked, or changed, or altered; for a Revocation, Alteration or Change, prefuppofes a former Effence, as the Rule of the Logician is, (a) Omnis privatio prasupponit babitum: And altho' future Powers and Authorities annexed to Estates, as a Power to make Leases, &c. given to him who has an Estate for Life may with the Estates be revo-ked; yet it was objected, That when all is in Contingency or Possibility it can't be revoked; and the Use, which by Operation of Law was vested in Leonard Lovies the Grandfather, can't be revoked, for the Proviso of the Indentures extends only to Uses declared by the fame Indentures, and not to an Use created by the Law. But it was answered and unanimously resolved by the Court, That the Revocation was good: For Uses and Powers in Contingency and (6) 2 Rol. 792. Possibility, may by mutual Assent of the Parties be (b) revoked and determined, for as they may be raifed by Indenture, fo by Proviso or Limitation annexed to them in the fame Indenture, they may be extinguished and destroyed, either before or after their Essence. And it was refolved, that these Words, The faid Indentures, and every Clause and Article therein contained, extend to all the Uses and Limitation in Contingency and Possibility. And this Resolution concurs with common Experience, s. That Estates limited to 1, 2, 3, &c. Sons, before any is born, are usually by the like Provisoes, and with

out Question daily revoked. And without Question the

(6) Co. Lit. 341. b.

Indentures, as to the Direction and Declaration of Ules. may lose their Porce in Part, and stand in Part; and if the Operation as to Part be taken away by the (a) Proviso, (a) Co. Lit. then the Peofsment for that Part is to the Use of the Feof- 237-2. for and his Heirs; and by Confequence in the Cafe at Bar. 2 Rol. 792. where Leonard Lovies had an Use vested in him by Operation of Law upon the Feoffment, till other Declaration was made by his Will, now by the Revocation he has an absolute Estate in Fee-simple, ut in pristino statu suo with-

out any Limitation.

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Also the Chief Justice held, That the said Devise to Thomas was but for Years, because it is so devised in express Words, and against the express Words, no Inference or Interpretation shall be admitted in this Case, for the Words are, Item, I give, grant, will and bequeath, to my Son Thomas all my Manors, &c. To have and to bold to my faid Son Thomas, and to the Heirs Males of his Body lawfully begotten, from and after my Death, for and during the Term of (b) 500 Years then next ensuing fully to be com- (b) Moor 773, pleat and ended, &c. and the Remainders to William Lo- 810.
Cr. Jac. 62,63. vies and others, to every of them and to their feveral Heirs 1 Rol. 741, Males of their Bodies, without any Restraint to any Num- 821, 847 ber of Years, and note, the Liberty given to Thomas is in 2 Brownl. 104. these Words, Otherwise than to lease, &c. the same for Years Godolp. Leg. determinable upon the Death of any three Persons or less 351. Number of Persons: But in the Liberty given to William and the others, the Words, Otherwise than they may law- (c) Cr. Jac. 62. fully do by the Statute of 32 H. 8. Which Act he doth not (d) Br. Estate mention in the Devise to Thomas: So insomuch as Thomas 32.

has an Estate but for 500 Years, so long as he has Issue of (e)Br. Estate 50.

his Body he gives him Power only to demise for Years, but (f) 1 Rol. 611, to William who has an Estate in Tail, he leaves him Power 741, 831, 915, to lease the Lands for three Lives of 21 Years, according 1 Rol. Rep. 355. to the Statute of 32 H. 8. which gives such Power to Te- 2 Rol. Rep. 129. nant in Tail, and therewith agrees Winch Justice. But 424. Cr. Car. 210. these Words, During the Term of 500 Years, will make a Orph.Leg.348, Limitation to a Term of Years to determine it for Want of 351.

Issue Male. And that it is but (c) a Term for Years in Swinb. 135. Grants, the Books are express in the Point, (d) 11 Aff. 21. 1 Sid. 37, 451.

33 Aff. p. 17. 39 E. 3. 37. 19 E. 3. Accompt 56. 9 H. 6. Godb. 42. 58. 22 H. 6. 33. 34 H. 6. 27. Litt. 168. 10 Eliz. Dyer Dyer 7. pl. 8. 276. Vide 21 H. 8. (e) Br. Estates, the like But as 8 Co. 95. 2. 276. Vide 21 H. 8. (e) Br. Estates, the like. But as Went. 333,334. to that Point which had been controverted betwixt this i Bulftr. 191, Court and the Court of King's Bench, in a former Ac-192. tion brought upon this Devise, no Resolution as to that Cr. Jac. 510. Point was now given by the Court. Note, Reader, if a Palm. 334.

(f) Term be devised to one and the Heirs Males of his Moor 758,807, Body, his Heir shall not have it, but his Executors, for B. N. C. 209.

a Term & 334.

Leonard Lovies's Cafe. PART X

(a) 1 Rol. 837. a Term which is but a Chartel can't (a) be entailed, and a Rol. Rep. 129. such Device may well alien the Term to whom he pleases. And fo it was adjudged Trin. 18 Elizi in the King's Bench in Peacock's Case, and anno 31 Eliz. resolved by Anderson and Walmesley, being referred to them out of the Chancery, Cr. Eliz. 143. between Higgins and Mills.

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Hill. 8 Jac. Regis.

Doctor Leyfield's Cafe.

Mohn (a) Leyfield Doctor of Divinity brought an Action (a) 1 Bulftr. of Trespass in the King's Bench, Hill. 8 Jac. Regis, Cr. Jac. 317. Rot. 1282. against Henry Hillary, for Corn and Hay taken and carried away at Old Cleve in the County of Somerset. The Defendant pleaded in Bar, That Queen Elizabeth was seised of the Rectory of Old Cleve in the same County in her Demesne as of Fee as in Right of the Crown of England; and by her Letters Patent 20 Junii 35 of her Reign (without faying (b) here shewed forth) demised the said (b) i Buistr. Rectory to Conand Prowse for his Life, who 16 Jan. anno 154.

3 Jac. Regis demised the said Rectory to George Pincomb 2 Rol. Rep. for eight Years, if the said Conand tam din viveret; and 172, 191. that the Defendant as Servant to the said George took the 1 Rol.Rep.221. Corn and Hay as Tithes severed from the nine Parts, and Lane 32. averred the Life of the faid Conand: Upon which the Plaintiff demurr'd in Law, and shewed the Cause of his Demurrer, because the Defendant's Plea amounted to the (c) General Issue. And it was adjudged in the King's (c) Winch 20. Bench, That the Bar was insufficient, because the Defen-Jenkins Cent. dant in his Plea (d) did not shew to the Court the Let- (d) Cr. Eliz. ters Patent of Queen Elizabeth, made to Conand Prowse, 146, 217.
which the Court took to be Matter of (e) Substance, and 1 Leon. 178.
which the Defendant ought to have shewed forth, al- Cr. Jac. 317.
tho he, in whose Right he justified, had but Part of the Lit. Rep. 306. Estate. Whereupon a Writ of Error was brought in the (e)Co.Lit.72.a. Exchequer-Chamber, and there two Errors were moved; one, which was affighed by the Plaintiff for his Cause of Demurrer, s. That the said Plea amounted to the General Issue, because the Defendant gave the Plaintiff

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80, 193, 311. Cr. Eliz. 232. Hob. 133, 198, 232, 301. Hutt. 15. Moor 885. 1 Rol.Rep.112. 48, 49. Savil 78, 87. Palm. 368. 1 Anderf. 150, 151, 160, 168. 7 Co. 9. b. Postea 92. 2. 94. b. Jenk Cent. 133. Co. Lit. 72. 2. Cr. El. 146. Cr. Jac. 165, 1 Sid. 106. (c) 11 Co.10.2. Br. travers per fans ceo 67. Postea 90, b. Doct. placit. 78. Br. Emblement 90. Postea 91. a.

(e) Br. Jurif-

diction 41.

Br. Colour 14.

Poftea 91. 2.

no Colour, in which Case no Judgm. ought to have been given against the Def. but the Court ought to have ruled him to answer over; the Second, That for Want of shewing the faid Letters Patent, the Court ought not to have given Judgm. against the Defend. for two Reasons, 1. Because by Law the Letters Patent need not be shewed forth. 2. If they ought to have been shewed, yet that is but Matter of Form, and (a) 1 Leon-44, not of Substance; and therefore by the Stat. of (a) 27 Eliz Reg. c. 5. for a fmuch as he has not shewed it for any Cause of his Demur. he shall not take Advantage of it. As to the first, it was objected, That the said Plea in Bar amounts to the (b) General Issue, because the Defend. has not given any Colour to the Plain', nor any Possession upon which he may Goldsb. 37,47, ground his Action, and thereupon they cited (c) 21 E.4.65.4 In Trespals for certain Cart-loads of Oats taken and carried away at Bodmon, against the Prior of Bodm'; the Def. said That the Corn was growing in a certain Place in B. in the Parish of Bodm', whereof he was Parson imparsonce, and (he ing oblig'd by the Rule of the Court to shew how he came to the same Parsonage) said, That he had the Impropriat by Title of Prescription; and that the Corn was severed from the nine Parts, and that he took them as his own Goods (and game 304. b. nine Parts, and that he took them as his own Goods (and gare (b) Cr. Car. 157. Colour) that he delivered them to one T. who delivered them to the Pl. to keep, and the Def. took them. And in (d) at H.6.30. a. Robert, Parlon of the Church of Clifford, brought an Action of Trespals against divers, and declared of h Goods taken and carried away, s. Wheat, Barley, three Co verlets, and three Blankets. As to the Wheat and Barley, the Defendant said, That before the Trespass one A. was Parlo of the faid Church, and the Parish, had sowed their Land (d) Br. Colour with Wheat and Barley the first Day of May, and afterward the same Day the said A. made the Defend. his Executor and died; and gave Colour to the Plaintiff, That he w instituted and inducted Parson of the said Church, and terwards the Parishioners severed the Corn from the mi Parts, and the Plaintiff as Parlon took the Corn, and the Defendants as Executors took it out of his Possession. As 19 (e) H. 6. 20. a. b. In Trespals against B. Prior of L. Breaking of his Close, and taking and carrying away his Grass being in Cocks. The Defend. as to the Close pleads his Freehold, as to the Cocks, he faid, That he himself Parlon imparlonce, and that the Place where is fo much Land of fuch a Town within the same Parish, (and he w compell'd by the Court to give a Name to the Place) that the Cocks were there growing, and severed from nine Parts; and you claiming to be Parson of the lan Church by the King's Presentment by his Letters tent, whereas you was not instituted nor inducted, took to

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fame Cocks, and we took them again, and there Fortefcue and Newton conceived that the Colour was not good. And in 2 H. 4, 5. a. The (a) Vicar of Saltash brought an Action of Trespass (a) Post. 91 for carrying away his Goods in S. The Def. alledged, that the Br. Trefp. 70. Dean of Windfor was Parlon of S. and that he as Servant took the Goodsas his Mafter's Goods, and the Pl. would have taken them from him, and he would not fuffer him; and ruled by the Court no Plea, because the Def did not acknowledge any Possession in the Pl. nor Property in him at any Time of the said Goods. (b) 34 H. 6. 10. b. The Abbot of St. (b) Post, 91. a. Mary of York brought an Action of Trespass against John Par- 34 H. 6. 10. b. Fitz. Replicafon of the Church of D. for taking of 30 1. at D. in the Countien 19. ty of Tork. The Def. faid, That there is a Chapel of our La- Br. Property 2. dy in the City of York in the Defendant's Parish, in which Br. Colour s. Chapel there is an Image of our Lady, to which the People ufed to offer Gold and Silver; and that the faid 30 h were offered there, and that he took them away, as he lawfully might, and gave Colour to the Pl. s. That he delivered the Money to B. to keep for the Defendant's Use, who delivered the Money to the Pl. and the Def. took it out of his Possession, &c. And in 39 H. S. 1. b. & 2. a. In (c) Trespass, the Pl. declared (c) Post. 91. a. of two Horses wrongfully taken; the Def. said, That the Ld. Br. Colour 37. Doct. pla. 79. Latimer is Lord of the Barony of Godford, which is an ancient Barony, and has been Time out of Mind, &c. Within which he and all his Ancestors, and all those whose Estate he has in the Barony, have had Waif and Stray a Tempore cujus, Sc. And further said, That the said Horses were stollen and brought within the Barony, where, &c. and there the Horses waived, wherefore the Def. as Servant to the faid Lord, and by his Commandment feifed, &c. and the Pl. took them, and the Def. took them again; and Exception was taken to this Plea, because the Def. gave not the Pl. any Colour: For altho' they were Waifs out of his Franchife, and the Defend. seised them, the Pl. has no Colour to take them; wherefore the Def. faid, That the Pl. supposing that the Property was in him before the Stealing took them, but per totam Curiam the Plea is nought, without faying in Fact that the Property was in him; wherefore he pleaded accordingly. And many other Cases were put to this Purpose, which I purposely omit. Vide (d) 22 E. 4. 23. b. Against which it was (d) Br. Colour argued by the Counsel on the other Side, That in this Case it Br. Property 35. is not necessary to giveColour, for two Reasons. r. Because the Br. Jurisdiction Def. justifies as Servant. 2. Because the Beginning of the 79. Post. 89. b. Bar is with the Queen's Letters Patent. As to the first, (e) Br Colour 14. 18 E. 4. 3. a. was cited, where in an Action of Trespass for Br. Traverse breaking his Close, and 30 Loads of Wheat taken and carried D. a. pla. 76.

away. Cr. El. 76.

(a) Doct. pla. Cr. El. 76. Cr. Jac.229. (b) Post. 91. h. (c) Br. Colour Postes 91. b. Br. Title 52. Br. Trav. 354. (e) Br. Colour

73,326.

(g) Doct. pla. 73, 293. Rait. Ent.59.b. Doct. & Srud. 159. a. (b) Doct. pla. 73, 293.

(i) Cr.Jac.229. Cr. El. 76. Doct. pla. 76. (k) 18 E 4-3. Br. Trav. 25 Cr. El. 76. Doct. pla. 76.

away. The Defendant pleaded, That one Sir C. M. was feifed of a Carve of Land, whereof the Place, &c. in his Demein as of Fee, and fowed the same Land with Wheat, and that the Def. as his Servant, and by his Commandment entred into the same Land and cut the Wheat, and carried it away, as he lawfully might. And it was moved, That the Bar was infufficient because the Def.gave no Colour: And it was held by all the Justices, that he should not in this Case give Colour to the Plaintiff, because in all Cases where a Man justifies as (a) Servant to another, and by his Commandment, he shall not give the Pl. any Colour. As to 2. Colour always ought to be given by him who is (b) first in the Conveyance, or else all before is waived; and therewith agree (c) 10 H. 7. 14. b. 15 E. 4. 32. a. (d) 18 E. 4. 10. a. & (e) 22 E. 4. 25. a. And (d) Br. Colour in this Case Q. El. is the first in Conveyance by her Letters Patent, and the Def. can't suppose that the Pl. claims by former Letters Patent, for then that would give the Pl. a good Title; as in 12 H. 6. Colour 54. In Trespass for breaking his Close, the Def. said, That one H. enseoffed him, (f) Doct. pls. and the Pl. claiming (f) by Colour of a Lease made to him for Term of Years before the Feoffment, where nothing passed, entred, &c. And there Fitzherbert conceives that the Plea is not good; for if such Lease was, it passes pre-fently, and when he pleads that the Plaintiff claiming by Colour of a Lease for Years, where nothing passes, it is repugnant in it felf: For when he fays by Colour of a Leafe, this word Lease, implies a Lease in Law, for otherwise it is no Leafe. As in Affife, it is (g) no Plea to fay, that one H. enfeoffed him, and the Plaintiff claiming by Colour of a Feoffment where nothing passed entred, for the Law intends it is no Feoffm. without Livery; and therefore it is the (b) Use to plead, That the Plaintiff claiming by Colour of a Deed of Feoffment where nothing passed, &c. for by the Deed without Livery nothing in Truth passed. So if the Def. should say in the Case at Bar, That the Pl. claiming in by Colour of a former Grant of the faid Queen by her Letters Patent, &c. that implies a lawful Grant, &c. But both, those Reasons were disallowed by the Justices. For as to the first, It is true, when the Defendant in Trespass, &c. pleads, that the (i) Freehold is in 7. S. and that he by his Commandment entred; or that J. S. is seised in his Demein as of Fee, which is all one (as the Book is in (k) 18 Br. Colour 54. Commandment entred, there he need not give any Co-E. 4.) and that the Defendant as his Servant, and by his lour, because notwithstanding the Fee or Freehold be to one, yet the Pl. may have a Leafe for Years, &c. and there-

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with agrees 22 H. 6. 50. a, But when special Title is made, Doct. pla. 76. as in 2 R. 3. 8. a. Job. Atwood brought Trespass of breaking Cr. El. 76.
of his Close against one John Thingle and Wm Thingles the Br. Colour 26. of his Close against one John Dingle and Wm. Dingle; the Defendants said, That one Tho. Arwood was seised thereof, and enfeoffed J. B. and R. S. who enfeoffed Sir John Norbury, Knt. and the faid 7. Dingle in his own Right, and the faid W. as Servant to him, &c. and gave Colour to the Pl. by the faid T. Atwood: And 1 H. 7. 19. a. b. Rob. Redness Br. forcible entrie 24. brought a Writ of Forcible Fatry upon the Stat. of 8 H. 6. 8 H. 6. c. 9. against J. B. qui placitavit quod Johan' Hoke & Hen' Atwood fuer seisiti, &c. & feoffaverunt Fines & Sackvile in feodo, and the Def. ut serviens, &c. & dedit colorem prout oportet, and traversed the Force; for when the Def. makes special Title to him in whose Right he justifies as Servant, there it shall not be intended that the Fl. has any Interest in the Land, and so is the Difference. As to 2d Reason, The Doct. pla. 77. Def. ought to give Colour by former Letters Patent, s. colore quarundam literarum patentium fact præd the Pl. de tenementis pred ante, &c. pro termino, &c. ubi nibil tranfivit, and he shall not fay that the Pl. claiming colore concesfionis five dimissionis, &c. but colore literarum patentium, &c. and that the Colour shall be given in such Case, appears in 7 H. 7. 14. a. where in the same Case, Colour was

But it was refolved, That in Case at Bar Colour ought Dott. pla. 77.

not to be given to the Pl. And the Reason that Colour shall Cr. Car. 169.

be given in a Writ of Energy for difficiling Writ of Entry in Dy. 366, pl. 35. be given in a Writ of Entry sur disseisin, Writ of Entry in Nature of Affige, Affige, Trespass, &c. is, That the Law, (which prefers and favours Certainty as the Mother of quiet and repose) to the Intent that either the Court shall adjudge thereupon if the Pl. demurs, or that a certain Issue may be taken upon one certain Point, requires that the Def. when he pleads such special Plea, that notwithstanding that the Plaint. may have Right, the Def. shall give Colour to the Pl. to the End that his Plea shall not amount to the general Issue, and so to leave all the Matter at large to the Jury, which will be full of Multiplicity and Perplexity of Matter. And altho Colouris but a Fiction, yet lex fingit ubi subsistit aquitas: Vide Doctor and Student, c. 53. f. 160. But when the special Matter of Doct. pla. 77. the Plea, notwithstanding that the Pl. had Right before, utterly bars him of his Right, in such Case the Def. need not give any Colour, because he bars the Plaintiff of his Right, if he had any; in which Case it would be in vain to give the Plaintiff Colour, where it appears upon the Matter of the Plea that he had no Right. it appears For therefore in a real Action, as Affife, Writ of Entry in Nature of Affife, &c. if a collateral Warranty be pleaded, and the Defendant relies upon it,

or if an Eftop. be pleaded, or a Fine levied with Proclamations.

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(b) Fitz. Tref-41, 75. (d)22H.6.50.a. Antea 90. 2.

(e) Fitz. Co-lour 28. Br. Estray 6. Br. Forfeiture Doct. pl. 77.

)Doct.pl.77. Raft.En.675.b.

g) 12E.4,5.b. Supra.

(b) Br. Colour (i) Ant. 88. b. Br. Trav. 67. Br. Colour 59. Doct. pla. 78. (4) Firz. Colour Br. Colour 31.

(a) Post. 97. b. the Pl. is (a) barred altho he had Right; and therewith agrees 35 H. 6. Trespass 160. So, and for the same Reason, If the Def. conveys to himself a Title by Act of Parliament, as it is held in 3 E. 4. 2. a. b. when one justifies his Entry by a Cause which binds the Pl. or his Blood for ever, he shall not give any Colour: And therewith agrees (b) 22 E. 4.4, a. b. pass 141.

Br. Colour 61. Vide (c) 5 H. 7. 10. a. 3 E. 3. tit. Alf. But it a man per base of the Doctor of the Doc 41. and (d) 2 H.6, 50. a. If in Trespass for Goods taken away the Def. justifies, because he has Waif within his Manor; and shews, that one stole the said Goods de quodam ignoto, and waived 'em within his Manor, wherefore the Def. seised em, it is good without any Colour, and therewith agrees (e) 12 E. 4, 5. b. But it was there held by all the Justices, That de Biens 62. Br. if the Def. had said, that A. was possessed of the Goods as Trav. 241.

of his proper Goods, and that one B. had stoln the Goods ut fupra, that he ought to give Colour to the Pl. for then he proves that no Property was in the Pl. fo he had no Colour of Action; but there in the same Case he shews that they were stoln extra possessionem eujusdam ignoti, so it is not denied but that the Property was to the Plaintiff, and he is not bound to shew expresly in whom the Property was. The fame Law of a (f) Sale in Market overt, if he had faid, That fuch a one fold them, he need not give Colour; but if he fays, That fuch a one was possessed of the Goods as of his properGoods, and fold 'em him in Market overt, he ought to giveColour: And all this appears in the faidBook of (g) 13 E. 4, 5. b. But I conceive, that the faid Case is not well te ported, for the Reason there given makes against the Opinion of the Justices; for their Reason is, That the Pleashall not be good without Colour, when the Property is alledged in a certain Person, because it is proved, that no Property was to the Pl. and so he had no Colour of Action: Ergo, it iss good Reason that no Colour shall be given, because it is anab folute bar of the Property, and of all the Plaintiffs right, as appears before. And so is the Book in 32 H.6.1. a. b. in the fame Case when the Property is alledged in a Person certain and therewith agrees (b) 21 E.4.18. b. and (i) 21 E.4.65. a. And where in (k) 9 E. 4. 22. a. the Defendant when he justified for Wreck gives Colour; it is held in 21 E. 4. 18. A and 21 E. 4. 65. a. that in fuch Case no Colour shall be given, and the Reason of all the other Books agrees with it. So when the Matter of the Pla

bars the Right of the Plaintiff, no Colour shall be given

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Also when the Def. entitles himself (a) by the Pl. himself, (a) Doct.pl. ve. no Colour shall be given, 13 H. 7. 6. (b) 6 H. 7. 14. b. Also (b) Br. Treswhen a Man pleads to the Writ, or to the Action of the Writ, pass 280, no Colour shall be given, (c) 21 E. 4. 4. And for the Case of (c) Br. Colour Tithes, which is the Case at Bar, he who justifies for 'em shall sa not give Colour, for to whom soever the Property is, and who-Plowd. 281 a. soever severs them from the nine Parts, they belong to the Perk Sect. 63. Parson. And therewith agrees 12 E. 4. 12. (d) 21 E. 4. 18. b. (d) Br. Colour & 65. a. (e) And as to the said Cases which have been put on 57. the contrary Part. 1. In the Case of (f) 21 E. 4. 65. a. where 11 Co. 10. 2. Colour was given in the Case of Tithes, Brian Ch. Just there Br. Colour 59. held, that it was not necessary to be given, for such Plea was Doct. pla. 78. good without Colour; and as to the Case of (g) 21 H. 6. 30. a. supra: there Colour was given, but by no Rule of the Court, and the (g) Ant. 88. b. Opinion in (b) 19 H. 6. is not to the Contrary, inafmuch as he Br. Tresp. 48. took upon him to give Colour if any was necessary, but such Br. Emble-Colour which he gave was not good. The Case of (i) 2 H. 4. is ments 9. not of Tithes, but of other Goods, and therefore is not to be re- (h) 19 H. 6.20. sembled to this Case. In the Case of (k) 34 H. 6. 10. b. no Colour Antea 28. b. need be given, but there Moil towards the End of the Case, Fitz. Colour 7. saith, If any Man takes my Goods or Money, and offers'em to Br. Colour 14. an Image, in that Case I am barred against him as of Goods (1) 2 H. 4, 5. 2 sold and tolled in a Fair or Market, in which Case no Colour Fitz. Colour 41. shall be given. And as to the Case of (m) 39 H. 6. 1. b. & 2.a. Br. Tresp. 70. the Case of (n) Waif, when the Def. alledges that the Pro- Fitz. Replic. 19. perty was to the Pl. &c. It was refolved that no Colour shall Br. Property 7. begiven: And it appears before by (0) 12 E. 4, 5. b. and the Br. Colour 5. other Books, that no Colour shall be given in Case where the (1) Cr. El. 485. Defendant alledges that the Goods stoln and waived were Br. Colour 37. bona cujusdam bominis ignoti; and in the End of the Case of Doct. pla. 79. (p) 39 H.6. 2. a. the Reporter saith, Quere, If it is necessary in (n) Cro. El. 174. this Case to give Colour to the Pl. because by this Plea the Fitz. Colour 28. Property of the Horses is not denied to be to the Pl. before the Br. Estray 6. Stealing, and then it seems the Plea is good without Colour; de Biens 62. and there the Reporter further faith, Vide such Matter in a Dost. pla. 77. Replevin, anno 5 E. 3. where he gave no Colour where he (p) Supra. avowed for Wreck of the Sea, and the Case which he means is in Hill. (9) 5 E. 3. 3. a. Wm. de Newport of London brought 19 Fitz. Rea Replevin against Sir Henry de Nevil, Kt. and declared of the Taking of his Goods to the Value, &c. s. ten Lasts The Defendant of Herrings in the Town of Walring. That the Lasts of Herrings were cast by Tempest of the Sea out of any Ward upon his Land in Walring, where the Plaintiff had declared; and that the Defendant had Franchise of Wreck through the whole Town, as appendant to his Manor of Walring, and so his own Goods; Judgment if he should be answered to this Writ? And in this Case two Points were resolved.

Br. Forfeiture

received to a simple Averment, without answering to the

(a) Co. Lit. r. That against this (a) special Matter the Plaintiff was not

Caufe. 2. Notwithstanding the Def. did not acknowledge that the (b) Co.El.485. (b) Property was at any Time in the Pl. yet the Plea was good; for when Goods are found in the Sea, then they are out of the Custody and Possession of every one, then the Lord upon whose Lands they are cast, need not acknowledge whose Goods they were; and the Pl. by the Rule of the Court was driven to answer: Wherefore he said, that the Def. took the Goods out of the Possession of the Merchants and Mariners, and the Def. was compelled by the Court to take Issue thereon: In which Case it is to be observed, That if the Def. had generally claimed Property, he should not only say that the Property was in him, but further, and not in the Pl. or otherwife he doth not answer the (c) Declaration: But in the Case at Bar, because the Matter of the Plea bars the Pl. of his right, he need not deny the Pl's Property. Nota, Reader, every Colour ought to have four Qualities. 1. (d) It ought to be

(d) Doct.pl.72. (e) Fitz. Colour Br. general Iffue 14. Doct. pla. 75. (f) Cro. Jac.

(c) Co. Lit.

303. b.

122, 319. (g) Doct, and Stud, 159. 2. Doct. pla. 72.

A itea 89. b.

a Doubt to the Lay People, (e) 19 H. 6. 21.3.11 H. 4.3.a. 19 E. 4. 3. b. 23 H. 6. 54. 20 H. 6. 8. 36 H. 6. Tresp. 162. 36 H. 6. 7. Br. Colour 15. b. 20 H. 6. 27. As where the Def. fays, that the Pl. claiming by Colour (f) of a Deed of Feoffm. &c. that is good, for it is a Doubt to Lay People, if Land shall pass by Deed only without Livery, or not. g) 2. That Colour as a Colour ought to have Continuance, altho' it wants Effect; as if the Def. gives Colour by Colour of a Deed of demise to the Pl. for the Life of J.S. who was dead before the Trespass, that is not any Colour, for it doth not continue, but the Def. may well deny the Effect of it, that he claims by Colour of a Deed of Demise to him for his Life where nothing passed; and so there is a Difference betwixt the Continuance of the Colour, and the Effect of it. 2 E. 4. 19. b. 19 H. 6. 21. a. 9 H. 4. 3. a. 8 H. 6. 9. a. 14. a. 38 H. 6. 67. 9 E. 4. 17. b. Vide 19 E. (b) Doct.pl.73. 4. 3. b. 7 H. 7. 13. b. & 14. a. (b) 3. It ought to be fuch a Colour, that, if it was of Effect, would maintain the Nature of the Action; as in an Assise, to give him Colour of a Freehold, and not as Gardian in Knights Service. 2 Aff. p. 6. 28 Aff. p. 28. 43 E. 3. Aff. 53. 32 H. 6. 6. a. b. nor to his Ancestor where the Action is of his own Possession. 4 1,)Doct.pla.73. (i) Colour ought to be given by the first Conveyance as ha been said, otherwise all the Conveyance before is waived 10 H. 7. 14. b. 15 E. 4. 32. a. 18 E. 4. 10. a. 22 E. 4. 25. a

L. 5 E. 4. 134. a. 21 H. 6. 32. b. As to the other Error which was affigned, the said two Points were argued. 1. If the Letters Patent ought to be shewed by the Defendant, who justifies as Servant to him who has but Parcel of the Estate of him to whom the Letters Patent were granted. 2. Admitting that he ought to shew them, if the

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Omission of this Clause (Cur' bic prolat') be Matter of Sub- (a) Co. Lit. stance or Matter of Form; for if it be but Matter of Form, 304. b. Antea 88. b. then forasmuch as the Plaintiff has not shewed it particu- (b) Post f.94.a. larly and expresly for this Cause of Demurrer, he shall not Dy. 115. pl.55. take Advantage of it by the said Star. of (a) 27 El. cap. 5. 66.
And as to the first, (b) Austin's Case in 1 & 2 P. & M. Dy. Plowd. 560. b. 115. was cited, where in an Information of Intrusion in the Co Lit. 46. a. Manor of Eastfarleigh in Kent, the Def. pleaded the Letters Hob 324. Patent of K. H. 8. to Sir Tho. Wyat in Tail, and that Sir 2Rol. Rep. 491. Thomas leased to him for 36 Years, without shewing forth B idg. 27.
to the Court the Letters Patent; and the Ld. Dyer in re- (6) Post. 94. a. porting the Case, saith, Nota boc, and this stands, as it was Br. Aid de Roy faid, upon great Reason; for the Lessee having but Parcel of 80. the Estate, the Letters Patent do not belong to him, but to Br. Montt. de his Lesfor, and therewith agrees 29 Aff. p.2. (c) J. Eathread's (d) Bolst. 154. Case, and the Reason there given, is, Because the Pa-6 Co. 38. b. tent doth not remain with him who has but Parcel of the Postea 91. a. Estate, And in 28H. 8. Dy. 29. b. in (d) Trespass the Def. said, (e) Post. 94. 2. That the Place where was ten Acres of Land, whereof the K. (f)22M.6.42.a. was seised in Fee in the Right of his Crown; and by his Fitz Monstrans de faits 86. Letters Patent granted the Land to the Lady Carew for Plow. 148 b. Term of Life, who leafed to the Def. for Years, and aver'd Br. Montt. de the Life of the first Lessee, and so justified, and it was mo- faits 58. ved if the Plea was good without shewing the first Letters Cro. Jac. 372. Patent, and it was (e) held by Brown, Willowby and Bald- 1 Rol. Rep. win, That he shall not be compelled to shew 'em, because (b) Plowden the Letters Patent do not belong to him, no more than a (f) 143. b. Sub-Collector, (g) Under-Sheriff, or Incumbent, because they (i) Fitz. Monst. have not any Means to make their Grantors or Masters to de fairs 92.

shew 'em: And by them there is a Difference, when the Pa-1)Cro. Jac. 372.

tentee grants over his whole Interest, there the Patent be-1 Rol. Rep. longs to him, and therefore he shall shew it forth, but when (m) Co. Lit. he grants but Parcel, it is otherwise: And with the Case of 225 a.b.226.a. (b) Incumbent agree 31 E. 3. Monstrans des faits 177. & (1) 227.b. 317.b. 31 H. 6. 14. and the Case of the Sub-Collector and Under- Cro. Car. 209, Sheriff, 22 H. 6. 42. a. & 31 H. 6. 14. b. 12 E. 3. (k) Mon- Post. 93. b. 94. b. strans de faits 65. A Sub-Taxer shall justifie the Taking Cro. Jac. 70, of Goods without shewing the Commission; but if (1) a 103, 109, 292, Man will justify the Imprisonment of the Body of a Man by i Built. 154, Warrant, he ought to shew the Warrant.

But it was resolved, That the Lessee for Years in the Plowd. So. a. Case at Bar ought (m) to shew the Letters Patent made 222. a. to the Lessee for Life: For it is a Maxim in the Law, Dy. 29. pl. 199, That if he who is Party or Privy in Estate or Interest, or 200. a. he who justifies in the Right of him who is Party or Privy Palm. 87.1Rol. pleads a Deed, altho' he who is Privy claims but Parcel of Rep. 332.2 Rol. the original Estate, yet he ought to shew the original Rep. 172, 191,

Deed to the Court; and the Reason that Deeds being Doct. pla. 215.

1Mod. ? ep. 266.

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(a) 6 Co. 38,2, 9 Co. 25, a. Hob, 107. Co. Lit. 35.b. 121, b.225.a.b.

(b) Cro, Cas. 399. Co. Lit. 35. b. 121.b,25.a.b.

(e)Lit.fect.183. f. 41.2. Sect. 365, 366. Co.Lit.225 a.b. (d) Br. Monstr. de faits 142

(e) Boft. 93. a.

(f) Co. Lit. 227. b. (g)Br. Verd. 39. (h) Br. Grant 65. Br. nofm. 36. (i) Doct. pla. 201, 306.

so pleaded shall be shewed to the Court, is, that to every Deed two Things are (a) requifite and necessary; the one, that it be fufficient in Law, and that is called the legal Part, because the Judgm. of that belongs to the Judges of the Law; the other concerns Matter of Fact, sc. if it be sealed and delivered as a Deed, and the Trial thereof belongs to the Country. And therefore every Deed ought to approve it felt, and to be proved by others: Approve it self upon its shewing forth to the Court in two Manners. 1. As to the Composit, of the Words to be suffic, in Law, and the Court shall judge that.2. That it be not razed or interlined in material Points or Places, and upon that also in ancient Time the Judges did judge upon their view, the (b) Deed to be void, as appears in 7 E. 3. 57. 25 E. 3. 41.41 E. 3. 10, &c. but of late Timesthe Judges have left that to be tried by the Jury, s, if the rafing or interlining was before the Delivery. 3. That it may appear to the Court and to the Party, if it was upon Condit. Limit, or with Power of Revocat. &c. to the Intent that if there be a Condit. Limitat. or Power of Revocat. in the Deed, if the Deed be Pole, or if there wants a Counterp. of the Indent. the other Party may take Advant. of the Condit. Limitat. or Power of Revocat. and therewith (c. Litt. c. Conditions f. 90 & 91. (d) 40 Aff. 34. agree. And these are the Reafons of the Law, that Deeds pleaded in Court, shall be shew'd forth to the Court. And therefore it appears, that it is dangerous to fuffer any who by the Law in pleading ought to shew the Deed it felf to the Court, upon the general Issue to prove in Evidence to a Jury by Witnesses that there was such a Deed, which they have heard and read; or to prove it by a Copy: For the Viciousness, Rasures or Interlinations, or other Imperfections in these Cases, will not appear to the Court; or peradvent. the Deed may be upon Condit. Limitat. or with Power of Revocat, and by this way Truth and Justice, and the true Reason of the Com. Law would be subverted. But yet in great and notorious Extremities, as by Cafualty (e) of Fire, that all his Evidences were burnt in his House, there if that should appear to the Judges, they may in favour of him who has fo great loss by Fire, fuffer him upon the general Issue to prove the Deed in Evidence to the Jury by Witnesses, that Affliction be not added to Affliction, and if the Jury find it, (f) altho' it be not shew'd forth in Evidence, it shall be good enough, as appears in 28 (g) All. p. 3. but in (b) 12 All. p. 16. the Judges would not suffer a Deed to be given in Evid. which was not shewed forth to the Jury. Vide 26 Aff. p. 2. the like. But the (i) Copy of a Record may be shewed and given in Evid. to the Jury, for Records are of so high a Nature, and such Credit in Law, that they can't be proved by other Means than by 'emfelves and no Rafure or Interlinations shall be intended in them. And therefore a Copy of a Record being testified to be true, is perpermitted

mitted to be given in Evidence; but the (a) fure Way is, to (a) Doct. placit. exemplify it under the Great Seal, or at the least under the 306. Seal of the Court. And in the faid Case of Casualty by (b) (b) Antea 92.b. Fire, there ought to be great Care and Discretion in the Judges, for notwithstanding any fuch Casualty by Fire, he in Pleading ought to shew forth the Deed to the Court, otherwife his Plea will be infufficient, and Judgm. shall be given against him; for the Law will rather suffer a (c) Mischief in (c) 42 E 3.5. b. a private Case, than an (d) Inconvenience, which by the Dyer 51. pl. 15. Breaking of the Rule of Law, should be brought upon the 152. b. Publick. Also the Deed ought not only, as hath been said, Lit. Sect. 231. to approve it felf, but it ought to be proved by others, sc. by 13 H. 4. 3. 2. Witnesses, that it was sealed and delivered; for otherwise Voucher 81. altho' the Fabrick and Composition of the Deed be legal, (d)40Ast.pl.27. yet without the other it is of no Effect: And all this which f. 247. has been faid of Deeds, as to the legal Part, may be also affirmed of the King's Letters Patent. And the faid Maxim aforesaid is proved by many Authorities in Law; and therefore in 3 H. 6. 20. b. 21, 22. in (e) William Pole's Affife, (e) Fitz. Morthe Case was such; Sir John Clynton Knt. by his Deed in strans de fait. dented enfeoffed William Daventure and his Heirs, yield- Br. Monstrans ing to the said Sir John and his Heirs the yearly Rent of defaits s. five Marks, with Clause of Distress; which Rent after the Death of Sir John, descended to Sir William Elington Knight, as to his Cousin and Heir, which Sir William by his Deed shewed forth, granted to the said William Pole now Plain. (who was a Lawyer) pro consilio impenso & imbendendo, 26s. 8d. Parcel of the faid Rent, to have and recive to him for his Life, and that he was thereof feifed and diffeifed; and there Westbury and others take a Diffeence, when the first Grantee grants over as great an Estate s he had, and where he grants a less Estate; for when he gants as great an Estate as he had, by the express Grant the shole Estate in the Rent remains in the Person of the seond Grantee, in which Case the first Deed of Right beongs to the second Grantee; and therefore in an Affise rought by him of this Rent, he ought to shew forth the ist Deed: But where he grants a less Estate than he had, where he that has a Fee-simple grants for Life, or makes Gift in Tail, the second Grantee shall not be compell'd to hew the first Deed made to his Grantor, because the Fee repains in the Leffor or Donor to whom the Deed belongs, and ono other, and therefore he shall not be compell'd to shew. he first Deed: But the Opin, of the whole Court was against ne Pl', and the Reason was, because he is privy in the Eate of the Rent, and claims by the first Grantee. Vide Lit. b. 3. c. Releas. fol. 106. Note, (f) Every Release made to (f) Lit. Sect. im who has a Rev'n or Rem'r in Fact, shall serve and aid 452. in who hath the Freehold, as well as him to whom the Lit. f. 107. 2,

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(a) 2 Ro. 3. (b) Co. Lit. 67.a.b. 275 a Lit. Sect. 453,

(c) Co. Lit. 225. b.

(d) Co. Lit. 226. 2.

(e) .Co. Lit. 225. b. Postea 94. b. (f) Co. Lit. Postea 94. b. (g) Br. Mon-strans de faits de faits 172:

Release is made, if the Tenant for Life has the Release in his Hand to plead; and the Reason of it is, because there is Privity in Estate betwixt him in Reversion or Remainder and the Tenant for Life; and yet the Deed doth not belong (a) to him, but to him in Reversion or Remainder. In the same manner Littleton saith, (b) Where a Release is made to Tenant for Life, or to Tenant in Tail, it shall enure to them in the Reversion or Remainder, as well Lit. f. 107. a.b. as to the Ten't of the Freehold, and they shall have as great Advantage of it, if they can shew it; but in Respect of the Privity of Estate, if they can't shew it, they shall not take Advantage of it: And therewith agrees 35 H. 6. (c) Monstrans des faits 118. where Prisot Chief Justice of the Common Pleas holds, That in many Cases a Man shall not plead a Release or Deed which doth not belong to him, nor can he have an Action to recover, without shewing of it; as if the Diffeifor makes a Leafe for Life, who is impleaded in a Precipe, and makes Default after Default, and the Diffeisor is received, he shall not plead a Release made by the Diffeisee to the Tenant for Life, without shewing it. So the (d) Lord by Escheat shall not plead a Release made to the Diffeisor by the Diffeisee without shewing it; neither shall he in Rem'r be receiv'd without shewing the Deed, and yet it doth belong to him, nor has he Remedy to get it. And it was faid, That these Cases were stronger than the Case at Bar; for when the said Conand made a Lease to the said George for Years, the Lessee might bind the said Conand by Covenant, or otherwise, to shew the Letters Patent to the Court, when need should be; but so can't the Tenant for Life, or he in Remainder or Reversion, for there no contract is made betwixt him who pleads the Deed, and him to whom the Deed is made. It is further said in 35 H. 6. that it was agreed, (d) That Guardian in Chivalry shall plead a Release made to his Tenant, without shewing it, and that is adjudged as it is there faid; and f Tenant in Dower shall plead a Release Cro. Car. 209, made to her Husband without shewing it. And in 14 H. 8. 4. b. it is agreed by all, That he who is (g) Privy in Estate, as Feosfee, Lessee for Years, &c. and he who justiffes as (b) Servant to him who is privy, ought to shew Co. Lit. 226. a. the Deed in Court, which they plead, &c. And (i) in (b) Cr.Jac.292, Debt against the Heir he shall not plead a Release made 317, 360.
Co. Lit. 226. a. to the Executor without shewing it, for there is Privity Plowd. 148. b. betwixt them, and therewith agrees 13 E. 2. Monstrans (i) Co. Lit. des faits 42. And there is another Maxim in Law, That (k) 20 H.7.6.b. where a Man is a Stranger to a Deed and doth neither Palm. 87. (k) claim the Thing comparison 6 Co. 38. a. b. Thing out of it, nor doth any Thing in the Right of the Yelv. 201.

Br. Monstrans Grantee as Bailiff or Servant, there he shall plead the

Patent or Deed without shewing it. If the (a) Tenant (a) Doct. placit. pleads a Grant of the Lord with Attornment, he shall not 49. a. shew it, and sic de similibus; but when he who claims the Things, or any Right or Interest out of them, or justifies in Right of the Grantee, there he ought to shew the first Grant, as the second Grantee of the Rent-charge shall shew the first Grant, and so shall his Bailiff; and the Grantee of the Rent-charge shall not plead the Release of the Difseise to the Disseisor without shewing it; for altho' he doth not claim the Land of which the Release is made, vet he who has a Rent out of Land, has a Right in the Land which by Release of all his Right will be extinguish'd, and therefore he ought to shew the Deed in such Case; and therewith agrees (b) 20 H.7. 6. b. and 14 H.8. 5. (b) Br. Mon-The Differe shall not plead a Release to the Different neither the Right in the Land, nor of Rent issuing out of the Land, without shewing it; for where one claims the Thing to which a Release is made, or a Right or Interest out of it, the Law makes a Privity in respect of his Estate or Right in the Land, to fuch Intent that he shall not have Avail of the Deed without shewing it. Which Cases are fronger than the Case at Bar; for in the Case at Bar, he claims Estate and Interest in the Land it self which is demiled by the Letters Patent, and therefore he ought to shew them. And as to the Cases which have been urged to the contrary, and first to (c) Austin's Case, there is not (c) Dyer 115. any Authority in the Book, that it was either allowed or pl. 65, 66. disallowed by the Court; and the said Case of (d) Eathread Plowd. 560. b. in 29 Aff. p. 2. There the Prior alien made a Lease for Co. Lit. 46. 2. Life, which he made as Prior out of the Inheritance of the Moor 362.

House, and not by Force of the Letters Patent, by which 2 Rol.Rep.491. but a Chattel passed. And in the Case of (e) 28 H. 8. there Bridg. 27. Fitzberbert, Mountague, and Knightley held, That the Antea 52. a. Letters Patent ought to be shewed in such Case, & sic gens (d) Antea 92.a: contra gentem.

And as to the second Point, it was objected, That it was de faits 163. but Matter of Form, and the (f) Substance is the Grant Dyer 29. of Queen Eliz. by her Letters Patent, which is confessed by pl. 199, 200. the Plaintiff by his Demurrer. And the Book in (g) 6 E. Buller. 154. 4. 2. a. b. was objected, where Choke holds, that if one be Palm. 87. bound upon Condition to perform the Covenants in certain (f) Doct. pl. Indentures; and he pleads Performance without shew- 69. a. ing them in Court, and the Plaintiff replies, and shews (g) 8 Co. 120.b. Breach, he makes the Bar good; for he fays, That of such Things which are not material, the Replication will make the Bar good; by which it was inferred, that the shewing of the Indentures was a Thing of Form, and not of Matter. And a Judgment was cited Mich.

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29 & 30 Eliz. in this Court in the Mayor and Commonally () Cr. El. 75, of (a) Launceston's Case in Trespass in Cornwall, the Let-

ters Patent of Queen Elizabeth were pleaded, fc. that Queen Elizabeth by her Letters Patent concessit, &c. without fay. ing (Cur' prolat') upon which the other Party demurred generally, and the Plea adjudged good. But it was refolved, that it was Matter (b) of Substance, as appears by the Causes for which Deeds shall be shewed forth. And as to the faid Case of the Mayor and Commonalty of Launceston, it is true, that such Judgment was given upon Argument of other Points: But in a Writ (c) of Error Mich. 30 & 31 E. liz. upon the Statute of 27 Eliz. Error was affigned, That

Cap. 4. Hob. 233 the Letters Patent were not shewed forth; and it was re-(6) Cro.El.117. folved, That for this Cause the Plea was insufficient in Substance; and therefore it was resolved by all the Justices of the Common Pleas, and the Barons of the Exchequer, that

the Judgment should be reversed. And of such Opinion in the Case at Bar, were all the Judges of the Common Pleas and Barons of the Exchequer, and so the Judgment given

by the Judges of the King's Bench in the Case at Bar was affirmed. Observe well Reader, this Case adjudged by all the Judges of England, and Barons of the Exchequer.

Nota Reader, as to the faid three Cases put in 35 H. 6. fc. (d) Antes 93.b. of the (d) Guardian, (e) Tenant in Dower, and Tenant by

Co. Lit. 225. b. the Curtefy, they are good Law: For as to the faid two (c) Antea 93.b. Cases of Guardian and Tenant in Dower, there is a Diffe-Cro. Car. 209, rence where a particular Estate or Interest is gained by the

Cro. Jac. 317. Law, and whereby the Act of the Party: In the Case at Bar, the Interest is gained by the Act of the Party, who might provide for himself; but when the Law creates the Estate,

nd the Deed doth not belong to him, nor ever was in his Power, then he shall not shew it, as in the said Case of

Guardian in Chivalry; and therewith agrees 20 E.; Darrein Presentment 13. 33 E. 3. Gard. 162. And there-

fore the Guardian in Chivalry in a Writ of Dower brought

(f) 9 Co. 19, 2. against him, shall not plead (f) Detainment of Charters, Co. Lit. 19. 2. because they do not belong to him, but to the Heir, as it because they do not belong to him, but to the Heir, as it

Dy.230. pl. 52. is held in 10 E. 3. 49, &c. The same Law of Tenant in Perk. 1ect. 361. Dower, as it is held in 5 E. 3. Hors de son Fee 2. 3 H.6.

21. a. 7 H. 6. 1. a. 7 H. 5. 5. a. Vide 11 H. 4. 83. 4

14 H. 8. And fo of (g) Tenant by Statute-Merchant, Sta-

Ver. N. B. 9. b. ple, Elegit, &c. for they come to the Possession by Ex-(g) Co. Lit. ecution of Law, and against the Will of the Ter-Te

225. b.
5 Co. 75. 2. nant who has the Deed; for, Judicium reading.
Cro. Car. 209, virum: And therewith agrees 24 H. 7. 6. a. b. But
442.
Cro. Jac. 37.
(b) the Tenant by the Curtefy ought to flew the Re
Cro. Lit. leafe made to his Wife, for altho his Estate be created
by

10 E. 3. 49. Fitz. Dower

(8) Co. Lit.

(6) Cro. El.

153, 217. 1 Leon. 300. Cro. Jac. 32.

16, 17 Car. 2.

22, 23 Car. 2.

cap. 8.

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by Law, yet the Deed belongs to him, and he had it in (a) Doct. plan his Power, because the Deed was made to his Wife, and Antea 88. b. he may detain it during his Life. Vide 14 H. 8. 4, 5. Note Cro. Car. 157 Reader, when a Plea amounts to the (a) General Isfue, and Cro. El. 146 the Plaintiff demurs upon it, if the Defendant will not 147, 433, 485. plead the General Issue, but join in Demurrer, the Court 1 Sid. 106. shall adjudge against him at the Common Law upon the Doct. & Stud. general Demurrer, and after the faid Act of (b) 27 Eliz. Co. Lit. 303. b. upon fuch Special Caufe shewed as was in the Case at Bar. Hob. 127, 133, And by these Reasons and Differences you will the better 218. Winch 19: understand your Books; and the Books which prima facie to Cro. Jac. 165, some seem to disagree, are well reconciled.

319. Noy 106.

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Edward Seymor's Cafe.

i Bulftr. 162. Jenk. Cent. 51. Cro. Car. 58. Hard. 414.

BEtween William Heywood Gent. Plaintiff in Ejectione firme in the King's Bench, and Samuel Smith Defendant, upon a Demise made by Edward Seymor Esquire, 9 Martii, anno 4 Jac. of a House within the Parish of St. Anne infra præcinctum Black-fryars, in Warda de Farringdon infra London, for three Years, &c. and that the Defendant had ejected him, &c. The Defendant pleaded Not guilty; and upon this Iffue a Special Verdid was given to this Effect: Sir Thomas Cheyny Knight was feised of the said Messuage in Fee, and 6 Decembr. ann I Eliz. by his Will in Writing devised the faid Meffuage to Henry Cheyny his Son, (afterwards Lord Cheyny) and to the Heirs of his Body; the Remainder to John Cheyny, and to the Heirs Males of his Body; the Remainder to the next Heirs Males of the faid Thomas Cheyny, and to the Heirs Males of their Bodies; the Remainder to the next Heirs of the faid Sir Thomas for ever, and afterward the faid Sir Thomas Cheyny died feised: After whole Death the faid Henry his Son entred into the faid Me fuage, and was thereof seised in Tail, with the Remainden over in Tail, the Reversion in Fee to him and his Hein and is Decemb. anno 22 Eliz. by an Indenture enrolled in the Chancery within fix Months, for a certain Sun of Money bargained and fold the faid Meffuage to Wil liam Higham Cent. and his Heirs, by Force whered he entred and was thereof feifed accordingly, and after wards the said Henry Cheyny, sc. Octob. Mich. 22 E. liz. levied a Fine with Proclamations of the said Mc. suage to the said William Higham and his Heirs, with

general Warranty to him and his Heirs against all Men. (a) 1 Saund 261, William Higham 19 Decemb. anno 23 Eliz: of the said 3Keb. 499. Cro. Messuage enseoffed Edw. Stanbope Esq; in Fee, who 30 El. 805. Moor Jan. anno 26 Eliz. enfeoffed Henry Lord Seymor in Fee, 625. Cart. 210. who ult. Octob. anno 26 Eliz. of the said Messuage enfeoffed 2 Bulstr. 165. Edward Lord Seymor in Fee; and that the said John Chey-Jenk. Cent. 51. my in Remainder had Issue Tho. Cheyny, and died; and af-Antea 45. terwards the said Henry then Lord Cheyny died anno 29 E-Post. 98. 2. 1 liz. without Iffue; and that the faid Tho. Cheyny was Cou- Bulft. 165. Cro. fin and Heir to the said Henry Lord Cheyny, and the said Car.429. 1 Co. Tho. Cheyny 16 Novemb. anno 31 Eliz. entred into the said 59.b. 70.2.77.2. Messuage, claiming the said Messuage by Force of the said 79.2. 3 Co.27.b. Remainder in the said Will; and that the said Edward 84.2.b.40.22. Remainder in the laid will; and that the laid Edward a. 30.b. 64.b. Lord Seymor died, having Issue the said Edward the Lef- 66.a.b. 122.a.b. for of the Plaintiff his Son and Heir, who entred into the 6Co.34.2.41.2. faid Messuage, and made the Lease to the Plaintiff, as in 79.2.7Co.37.b. the Declaration is alledg'd, and that the Desendant as Ser-9Co.16.b. 135. vant of the said Tho. Cheyny, and by his Commandment b. 10 Co 52 ejected him, &c. Et si super totam materiam the said De- 13 Co. 19 3 Keb. sendant legitime intravit necne, Juratores præd. ignorant, Cart. 210. Co. & petunt inde advisamentum Curie, &c. And this Case Lit. 150. a. Lit. was argued at the Bar and at the Bench in the King's Bench, Rep. 122. 5E 3. and therein divers Points were resolved per totam Curiam. E. 3.26. Br. A-1. 1. That by the Deed indented of Bargain and Sale in-vowry 159 rolled, the Bargainee had an Estate (a) descendible to his (c) 1 Saund 261. Heirs, determinable upon the Death of the Tenant in Tail, Cart. 210. and also he had the Reversion in Fee expectant upon the E- (d) 1 Bulstr. 163, flate in Remainder in Tail, and that the Wife of such Bar- 164, 165. Co. Lit. 332.b. Cro. gainee should be (b) endowed. And therewith agrees (c) 24 Car. 156, 321. P. 3. 28. b. in Calye's Case; but such Dower shall be de- Moor 28, 220. terminable by the Death of the Tenant in Tail; 5 2. It was pl. 359. 9 Co. resolved, That the Fine levied to the Bargainee did not (e) Co.Lit.262. make a Discontinuance of the Rem'r to John Cheyny, be- 2.372.a.b.326.a cause it did not touch or displace his Remainder, and no E. 2 lnst. 519. 3 Inst. 216. 1 flate of Freehold passed by the Fine, but the Fine with Pro- Leon. 77, 213. clamations corroborated the Estate of the Bargainee; and 2 Leon.53,157. by the Statutes of (e) 4 H. 7. c. 24 and 32 H. 8. c. 36. made 3 Leon. 10,221, his Estate more perdurable; for where it was (having re-Poph. 108, 114. ard to the Estate-tail) determinable upon the Death of the 3Co.77.b.78 b. Ten't in Tail, now it is not determinable till Ten't in Tail 79.a. 86.b.87.a. dies without Issue, but if the (f) Fine had been levied before 90.2.b. 89.2.

Bargain and Sale enrolled, it had been a Discontinuance; as Co.125.b. 7Co. Bargain and Sale enrolled, it had been a Discontinuaries, 32.b. 9Co.104.

t was refolved in Hynde's Case in the 4 Part of my Reports, 32.b. 9Co.104.

The appropriate discontinuaries be 105.a.b. Cro. 6.70.b. but in the (g) Case at Bar the Fine operated upon the El.561. Sav. 85, Estate precedent which passed by the Bargain and Sale, and 88. Palm. 255. hered s guided by the precedent Estate, and no Conclusion, for Golds. 171,172. he may confess and avoid, as in (h) 6 R. 2. Estoppel 111. 371.b. 3Bulstr. J. 3. It was objected, That where by the Feosffment of the 152 Dy.72 pl.3. after 22 E Mel Bargainee the Rem'r of J. Cheyny was (i) displaced and put 133. pl. 2. 186. 24. pl. 28, 254. pl. 104, 256. pl. 9, 270. pl. 21. (f) Gro. Car. 218, 321. i And. 27, 113, 85, 286. 2 And. 161. O. Benl. 13, 14. Hob. 222. Owen 69, 70. Poph. 49. Gro. El. 917. Inft.671,672. Godb. 218. 1 Leon. 6. 3 Leon. 1. 2. Jenk. Cent. 5, 51. 1 Bulftr. 163. 2 Bulftr. 34. 1 Leon. 337, 338,680,681. 1 Co. 120. b. (g) 4 Co. 91 a. Hynde's Cafe. (b) 1 Bulftr. 164. 5. El. 917. 6 R. 2. Estoppel 211. 2 Co. 74. b. 78. a. (i) Gro. Gar. 156. 9 Co. 106. a. Jenk. enera

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(a) 9 Co. 106.a. to a (a) Right, fo as the Warranty in the Fine descended

(c) 1 Bulftr, 166. (d) Cart. 240.

(e) Co. Lit. 385. 2. 1 Bulft. 166. Co. 63. 2 Vaugh. 389.

(f) Co. Lit. 385. 2. I Bulftr. 166. 3 Co. 63. 2. Vaugh. 388. Br. Formed. 57. Plowd. 436. b. Firz. Garrantie Statham Garrantie 4. 19. b. 370. b. Plowd. 234. 2. 553 b. Fitz. Garr. 68. Br. Affets per Descent 31. Br. Tail 34. Roy 5. Br. Garran. 52. (b) 9 Co.106.a. Co. Lit, 327.b.

upon John Cheyny, who has but a Right, and therefore shall bar him: It was unanimously resolved per totam Cu-(b) Jenk. Cent. riam, That this (b) Warranty should not bar the Remain. der for divers Reasons. 1. Because every Warranty ought to be knit and annexed to an Estate, for every Warranty has its Effence by Dependency upon an Estate; and in this Cafe at the Time of the Fine levied the Warranty was annexed to the Fee-fimple determinable upon the Death of the Tenant in Tail without Iffue, and to the Reversion in Fee, but did not extend to the Estate of John Cheyny in the Remainder, for that was not then displaced or devested, but continued in him, for John Cheyny at the Time of the Fine levied, and after was seised of his Remainder. Then if the Warranty at the Time of the Creation of it be annexed to an Estate, the Conusee by his Feosfment or Act can't extend it farther than it was at the Time of its Creation; and therefore when the Estate-tail, to which the Warranty is annexed, is determined by the Death of the Tenant in Tail without Issue, the Warranty, which had its Essence by Dependency, is also (d) determined, for then there is no Estate which will support it: And therefore it was agreed, That if a Man makes a Gift in Tail, and warrants the Land to him and his Heirs, and afterwards Tenant in Tail makes a Feoffment in Fee, and dies without Issue, the Feoffee shall not 't) rebut the Donor in a Formedon in the Reverter, because the Estate, to which the Warranty is an nexed, is determined: But it is held in 7 E. 3. 34 & 35. That if a Man makes a Gift in Tail, and warrants the Land to him, his Heirs and Assigns, and afterwards Tenant in Tail makes a Feoffment in Fee and dies, he shall rebut the Donor by Force of the faid Warranty in a Formedon in the Reverter: And this Book is cited by Wilby in (f) 46 E. 3, 4. b. which Book is good Law, if it be intended of a Gift in Tail made before the Statute de donis conditionalibus, for then the Warranty was annexed to an Estate in Fee simple, and the Donor had but a Possibility of Reverter which might be barred by a collateral Warranty. Vide (8) 45 Aff. Pl. 6. and Plow. Com. in the Lord Barkley's Cale 234. a. But when a Man makes a Gift in Tail with War ranty after the Statute, this Warranty, in what Mannel foever it be made, can't extend to bar the Reversion in Fee, for the Estate to which the Warranty extends, determined by the Death of Tenant in Tail without Islue and as hath been faid, a Feoffment or other Act done of the Donce subsequent, shall not extend the Warranty fur Br. Prerog. 52. the Donce Indiequent, man not extend the Warranty in Br. Serch pur le ther than the Estate-tail to which the Warranty at the Time

of the Greation of it was annexed. 2. It is a Maxim Law, That no (b) Warranty shall extend to bar any Estated d

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(a) Freehold or Inheritance which is in effe in Possession, (a) Co. Lit. Reversion or Remainder (and not displaced and put to a 327. b. 388.b. Right) before or at the Time of the Warranty made, al- 1 Ander:37,38. tho afterwards, and at the Time of the Descent of the Warranty, the Estate of Freehold or Inheritance be displared and develted. And therefore if there be Father and Son, and the (b) Son has a Rent-Service, Rent-Charge, of Rent- (b) Co. Lit. Seck, or Common of Pasture issuing out of certain Land, and 388. b. the Father releases to the Tenant of the Land with Warranty, and dies, it shall not bar the Son, for of the Rent of Common the Son was (c) actually feifed at the Time of the (c) Co. Lit. Warranty made, and he who is in Possession need not put in his claim, either to avoid a Fine or collateral Warranty; and in the same Case, altho' the Son after the Warranty made was (d) diffeiled of the Rent or Common, and afterwards the (4) Co Lit. Father dies, that shall not bar him, because the Warranty 388. b. at the Time of the Creation of it, did not extend to any Eflate of Freehold of Inheritance in effe at the Time of its Creation, but if the Son be diffeised of the Rent or Com- (a) t Co. 140.2: mon, and affirms himself to be diffeised by (e) bringing of 37 Aff 13. an Affile, and afterwards the Father releases with Warranty Br. Estate 34 and dies, there the collateral Warranty shall bar the Son of Br. Garrant. jo. his Rent of Common, because he had put a bare right at Br. Extinguishthe Time of the Watranty made. Vide (f) 31 Aff. P. 13. (g) Co. Lit. 22 Aff. p. 36. 41 Aff. p. 6. 33. E. 3. Garranty 74. So if (g) my collateral Ancestor releases to my Tenant for Life and (b) 1 Co. 67. 2. dies, it shall not bind me, because the Reversion continues (i) Starbam in my Person; but if my Tenant for (h) Life be disselsed, Garranty 3. and my Ancestor releases to the Disselsor with Warranty, (k) Co. Lit. and my Ancestor releases to the Different with the Estate of the 1333. b. 385. b. and dies, it shall bind me, because as well the Estate of the 12 Asi. 16. Tenant for Life, as my Reversion, was devested out of me 44 Asi. 35. f. at the Time of the Warranty made, and with this i) 45 E. 295.b. 3. 21. b. 8,21 H. 7. 11. a. agree.

4. It was clearly resolved, That a Warranty can't (k) en- iBulft. 164, 166. large an Estate, 22 H. 6. 15. b. 19 H. 6. 73. b. 20 H. 6. 73. 2H. 4. 13. a. 43 E. 3. 17. b. 43 Aff. p. 42. Vide 12 Aff. p. 17. 12 E. 3. Tail 3. 21 E. 4- 16. b. 44 E. 3. 10. b. 44 Aff.

Bassingborn's Assile.

5. It was refolved, That the Feoffment of the Conusee was no Discontinuance of the Remainder of John Cheyny, Br. Garranty to that his Entry shall be tolled, for none can discontinue 10. the Remainder of Reversion, but he only to whom the (1) 1 Buller. Land was entailed: And therefore if Tenant in Tail grants Moor 28, 220. Fee, it shall not Toll the Eentry of him in the Remain- Cro Cat. 156; er of Reversion.

ranty 4.

Fitz. Feoffm. 8. Br.Effate18,73. Fitz. Annuity

Co. Lir. 332. b. S. It Antes 96. a.

(a) I Bulftr. 165. 167. Cu. Lit. 227. 2. 2 Rol. 690. (b) 34 E. 3. Fitz. Droit 29. (c) 2 Rol. 690. Anr. 90. a. h.

6. It was resolved, That if the (a) collateral Warranty should bind, that it might be well given in Evidence, and found by the Jury, altho' fome Opinions obiter be to the contrary in 22 Aff. p. 37. & 7 H. 5, 6. a. Vide 34 E. 3. tit. (b) Droit 29. For altho' a collateral Warranty (c) gives not a Right, yet in Law it bars and binds a Right, and therefore may be given in Evidence; and eo potius, because now (d)Doct.p'. 85. in (d) Ejectione firme, and other personal Actions, it can't be pleaded by way of bar. 15 E.4. Entre 42. 20 H.7.4. a. 1 H. 7. 12. a. 21 H. 7. 32. a. 3 E. 4. 4. b. 8 E. 4. 19. 21 E. 4. 82. b. 22 E. 4. 4. a. b. 3 H. 6. 27. 36. b. 20 H. 6. 44. a. b. 35 H. 6. Trespass 160. 27 H. 8. 22. b. And that a collateral War-

(e) 1 Bulit. 167. ranty may be given in (e) Evidence, and found by the Jury. Doct. pla. 185. upon Not guilty pleaded in Ejectione firme, appears in the (f) 1 Co.120.b. first Part of my Reports in (f) Chudleigh's Case. And according to these Resolutions in Trin. 9 Jac. Regis, Judgment was given for the Defendant. Whereupon the Plain-

tiff brought a Writ of Error upon the new Stat. in the Excheq.Chamber; where it was refolved in this very Term by all the Justices of the Com. Pleas, and Barons of the Exchequer, That the Judgment given by the Judges of the K.'s Bench should be affirmed; and that the Warranty did not bind the Remainder of John Cheyny, for the Reasons and

Causes before recited without any great Difficulty. Nota (2) Co.Lit.1.b. Reader, every (g) Estate descendible to the Heir, is either an Estate of Inheritance, or an Estate of Freehold; an E-

state of Inheritance is either Fee-simple or Fee-Tail; an Estate of Fee-Simple is either an Estate of Inheritance absolute and indeterminable, as where Lands are given to a Man and his Heirs, he has fuch a pure and absolute Estate

which can never determine; or a Fee-simple determinable, and that is in two Manners, sc. either expresly derived out of an absolute and pure Estate in Fee-simple, or implicite, and derived out of an Estate-Tail; out of an absolute Estate

in Fee also in two Manners. First, by Condition, as upon Mortgage, and that is called a Fee-fimple conditional. condly, by Limitation, as if A. enfeoffs B. of the Manor

(b)Co.Lir. 18.2, of D. to have and to hold to him and his Heirs, fo long as C. has Heirs of his Body, and that is called a Fee-simple limited and qualified; and in both these Cases, the whole

Estate in the Land is in the Feosfee; and therefore no (b) Remainder or Reversion can be expectant upon either of them; implicite and derived out of an Estate-Tail, as in

the Cafe at Bar; when Tenant in Tail bargains and fells the said Messuage by Deed indented and enrolled to William Higham and his Heirs, and afterwards

Palm. 138. Hutt. 60. 2 Leon. 114. 2 Rol. Rep. 216,220. Vaughan 269. 2 Rol. 791. 'Plow .235.a. 239. b. 248,

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levies a Fine to him and his Heirs with Proclamations, he has an Estate in Fee-simple, as long as the Tenant in Tail has Heirs of his Body, derived out of the Estate-Tail, and this is a more inferior and subordinate, Estate in Fee simple than the other two aforesaid, for upon this a Remainder of Rever. may be expectant; and yet in (a) all these Cases, he (a) Doct. pla. who has any such Estate of Inherit may plead that he is feiled 287. of the Land in his Demesn as of Fee without shewing the Be- Cart. 211. ginning of his Estate, as well when he has a Fee-simple derived out of an Estate-Tail, as a Fee-Simple conditional or An Estate of Freehold descendible, in like mandemises Land to one and his Heirs (b) during the Life of (b) Co.140.b. ner is either expressed or implied; expressed, as if a Man J. S. or Tenant for Life grants his Estate to (c) one and Hob. 323. his Heirs; in these Cases the Lessee or Grantee has an E-Plowd. 556. b. flate of Freehold descendible, but no Estate of Inheritance, B. N. C. 141 for he shall be punished (d) for Waste and he in Reversion or Remainder shall enter for Forfeiture, and his Heir shall Dyer 253.pl.99, not have his (e) Age; for he in a Manner is but a special Co. Lit.239.22 occupant; nor shall he be in respect thereof charged as Heir 110. b. in an Action of Debt; implicite, as where in the Case at Bar Fir. Account 56. Tenant in Tail bargains and fells the Land to Wm. Higham Cr. Jac. 282. and his Heirs, he has an Estate descendible and determina- Moor 726. ble upon the Death of the Tenant in Tail, and yet he has (c)Co.Lit.41.b. a better Estate than the other has, for he shall not be pu- (a)Co.Lit.41.b. nished for Waste; or if he makes a Feoffment none shall 2 Rol. 826. enter for the Forfeiture, and his Wife shall be (g) endowed 6 Co. 37. b. determinable upon the Death of Tenant in Tail; and yet 2 Inst. 301.

Plowd. 151, (b) you Pleaders look well to it, that in such Case you do not begin your Plea, That the Barginee in fuch Case fuit (e) Dyer 321. seissitus in dominico suo ut de feodo, but (i) the sure Way is pl.22. to plead the special Matter, and to aver the Life of the 1 Anders. 21. Tenant in Tail.

And so you will the better understand your Books. s. Litt. (g) Ant. 96: a. 3. b. cap. Tail, & cap. Garranty, 9 E. 4. 12. 9 E. 4. 26. a. 3 Co. 84. b. 15 Ed. 4. 8. 2 H. 4. 13. 21 H. 9. 4. 18 E. 3. 12. 13 H. 9. (b) Cart. 209. 10. 18 H. 8. 3. b. 11 H. 4. 42. 7 H. 4. 46. 8 H. 4. 15. 19 E. (i) Doctrin pla. 3.48. 19 E. 3. Account 56. 33 Aff. Pla. 17. 27 Aff. Pla. 287. 31. 22 H. 6. 33. 39 E. 3. 25. 22 E. 3. 19. 27 H. 8. 29

Keb. 487.

Edward Seymot's Cafe. PART X. 21 H. S. titulo Estates 28. 50. 8 El. Dy. 253. 24 Ed. 31 28, b. 9 Ed. 4. 19: Plowden's Commentaries in Walfing-

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Bam's Case 555.

And I conceive that in the Case at Bar, the Remainder of John Cheyny by the Feoffment of the Conuse to E4ward Stanbope and his Heirs was not displaced, not put to a Right; for the Conusee had a Fee-Simple determinable upon the Death of Henry Lord Cheyny without Issue of his Body, and when he made the Feoffment his determinable Fee-Simple in Possession, and his absolute Fee-Simple expectant upon the Estate-Tail of John Cheyny in the Remainder should pass, and should not devest the Remainder of John Cheyny: For the Feoffment which in it self is not tortious, can't be tortious to another. But where Tenant for Life, or Tenant in Tail makes a Feoffment, the Feoffment in it felf is tortious; for Tenant for Life or in Tail can't give in Fee, and therefore the Feoffment it felf is tortious : And in Case of an Estate-tail is tortious as to his Issues : But when he who has a Fee-Simple, although it be determinable, makes a Feoffment in Fee: He who has the Fee-Simple, gives a Fee-Simple, and thereby he doth no wrong to his Heirs, and by Consequence no wrong to him in the Remainder. Also the Estate-Tail by the said Fine is utterly barred, and a new Estate in Fee-Simple created.

(A) Co. Lit. 189. a. 37 E. 3 Gard ranty 74. Nota, also Reader there are some Titles to which a (a) Warranty doth not extend, as the Title in Case of discharge, Condit. upon Mortgage, Sc. Mortmain, Consent to Ravisher, and the like, betause for these no Action lies, in which there can be Voucher or Rebutter, neither can a Descent toll the Entry in such Cases; and they continue in such Plight and Possession, as they were by their original Creation; and they by no Act can be displaced or devested out of their original Essence. Vide 34 E. 3. Garranty 72. A collateral Warranty shall not bar a Title of Dower, for that continues the Essence according to the original Creation: And yet for that an Action is given; and therefore there is a Difference betwixt a collateral Warranty, and a Fine levied, and five Years passed;

Co. Lit. 389. 2.

for upon a Fine and five Years paffed all the faid Th (a) Cro. Jac. tles are bound; and the Title of (a) Dower also, if an 133.

Action be not brought within the Time prescribed by the Ant. 49. b.

Go. Lit. 326 Statute, Vide Plow. Com. 373, 4,

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Co. Lit. 326. 2. 6 E. 2. Dower 145.

19 E. 2. Dower 165. Cr. Car. 201. 9 Co. 140. b, 8 Co. 72. b. Dyer 72. pl. 3.224.pl 28 2 Co. 93. 2. 10 Co. 49. b. 1 Rol. Rep. 160. 3 Inst. 216. Moor 53. 2 Rol. Rep. 69, 409. Goldsb. 148. 3 Leon. 50, 221. Palm. 235, the end of its production of the first of the state of th

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Beawfage's Cafe.

(a) Hardr. 121. 3 Co. 59. b. Cro, Car. 361. Hob. 13. Cro. El. 66,76, 178, 190, 199, 200, 271, 800. Dy. 25. pl. 157. 118. pl. 1. 119. pl. 1,2,3,4.324. pl. 32, 33. 364. pl. 29. Styl. 234. 2 Bulftr. 13. 213. 37 H. 6. 1. 4. Fitz.Obliga. 4. Br. Obliga. 37. Plowd. 62. b. 63. 2. 65. 2. Raft. Sheriffs 1 Leon. 132. 2Lcon.78,107, 3 Leon. 228. 7 Rol. Rep. 40, 169. 2Rol.Rep.201. Latch. 23, 54, 55. 143. O. Bendl. 110. 1 Jones 65.

N this Term it was moved at the Bar in the Case of one Beawfage, if the Sheriff who has Fieri facias may take a Bond of the Defendant to pay the Money into Court at the Return of the Writ; and the Doubt which was conceived upon it, was upon the general Words of the Act of (a) 23 H. 6. cap. 10. And if any of the faid Sheriffs, or other Officers, or Ministers aforesaid, take any Obligation in other Form, by Colour of their Offices, that it be void : And such Bond to pay the Money into Court, &c. is in other Form than the Statute prescribes. 5 But upon Confideration of all the Parts of the said Act, it was resolved, That fuch Bond was not made void by the faid Act, and therefore coharentia provisionum Actus præd'est observanda. First (as to this Matter) it is enacted, That Sheriffs, &c. shall let out of Prison all Persons arrested by them, or in their Ward by Force of any Writ, Bill or Warrant, in any Action personal, or for Cause of Indictment of Trespals, upon reasonable Surety of sufficient Persons having sufficient within the Counties where such Persons are so let to Bail, to keep their Days, &c. (except Persons in Execution by Capias utlagat', cap. Excom' Surety, of Peace, and Persons committed by the special Command of any Justice, and Vagabonds.) The fecond Clause is, That no Sheriffs, &c. shall take, or cause to be taken or made any Obligation for any Cause aforesaid, or by Colour of

Hutt. 70.3 Inft. 194. 1 Rol. 537. Moor 247. Owen 90. Godb. 136. Goldsb. 54, 66. Cro. Car. 287. 309. 448. 1 Keb. 391. Noy 33, 76, 172, 173. 3 Keb. 191. 1 Anderf. 267. 2 Auder. 122. 1 Sand. 161, 162. Poph. 165. Hetl. 25, 175. F. N. B. 251. b.

their Office, but (a) only to themselves, of any Person nor by (a) Plowd. 68.b. any Person which shall be in their Ward by the Course of the Law, but by the Name of their Office, and upon Condition written, that the Prisoners appear at the Day contained in the faid Writs, Bills or Warrants, and in fuch Places as the faid Writ, Bills or Warrants require. (Then comes the faid Clause:) And if any of the faid Sheriffs, &c. take any Obligation in other Form by Colour of their Offices, that it shall be void. So that the first Branch contains the Clause of the Precept and Commandment to Sheriffs, that they shall let Prisoners to Bail, who were arrested in personal Actions, &c. which the Sheriff could not do before this Act, as appears by (b) 22 H. 6. 46. a. b. 19 H. 6. 43. a. 21 E. 4. 77. b. (b) F. N. B. 1 F. N. B. 251. a. b. The 2d Branch contains the Form of the 251. b. Bond by which he shall be let to Bail: The 3d, the Penal-Br.Mainpr.37 ty, if the Sheriff do not observe the Form prescribed by the Stat. so that upon the Coherence and Dependency of the Branches, the later Words, altho' they are general, shall extend only to the precedent Branch, sc. of Bonds taken of those who are in their Ward. And according to this Resolution it hath been adjudged in this Court Trin. 34 El. 1656. In Debt by Dawson Sheriff of B. against Burman upon a Bond, the Def. pleaded the Statute of 23 H. 6. and shew'd that one K. recovered Debt and Damages against him, and fued out a Writ of Fieri fac' against him directed to the Sheriff of B. and that he made the Bond to the Pl. for the Execution, and that the Bond was void by the faid Act; upon which the Pl. demur'd. And it was refolved, first, That the faid (c) (c) Anders. 267. Bond was not within the faid Stat. because the Stat. extends only to such Bonds, which any in his Ward makes to him. adly, That the Bond was not void by the Com. Law; whereupon the Pl. had Judgm. And the like Judgm, was given in this Court, Mich. 28 & 29 Eliz. Rot. 1502. inter Burwey and Ket, upon Bond taken by the Sheriff pro solutione pecunia debita Domina Regina, upon an Extent out of the Exchequer. Nota, Reader, where it is faid in the last Clause That if any of the faid Sheriffs, or other Officers or Ministers aforesaid, take any Obligat. in other Form by Colour of their Offices, that it shall be void, It is to be known, that there are two manner of Forms, sc. Forma verbalis, & forma legalis; Forma verbalis stands upon the Letters and Syllables of the Act; Forma legalis is forma esentialis, and stands upon the Substance of the Thing to be done, and upon the Sense of the Stat. quia Notifia (d.Cr. Jac. 286. ramorum bujus Statuti non in sermonum foliis sed in rationis (e) Plowd.64 2. radice posita est. And (d) according to this Distinction Br. Der. 116. hath this Branch of this Act been expounded; and therefore Dy. 119. pl. 8. in 37 H. 6. 1. a. b. If the (e) Sheriff takes a fingle Bond of one Br. Obligat. 37. Fizz. Obligat. 4. in his Ward, who was bailable, it is void, for this Bond wants 7 E. 4.5

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(4) Plow.64.2.

(6) Yelv. 197. Bulft. 213. Hob. 14. Godb.250.251. Plowd. 64. b. 67. b. 68. b. (c) Dyer 324. pl. 32, 33. 2 Keb. 423 (d) Plow 68.2 7 E. 4, f. t. Firz. Det. 80. Non est factum 14. Co. 119. h. Dyer 120 pl.8. (e) Plow.68.b. (f) 1 Sid. 383. Latch. 143. (5) Plow. 68.

the effential Form prescrib'd by the Stat. for the Condit. prescribed there is wanting, which is Part of the Substance; so there (a) Moile faid, if the Sheriff had let one to Bail, which 37 H. 6. 2. b. there (a) Motte fait, it the blanch baliable, and had taken a Firz. Obligati is excepted in the Stat. and is not baliable, and had taken a fingle Bond, that it should be void, qd' alii Justiciarii concessor the land to the land taken a fingle Bond, that it should be void, qd' alii Justiciarii concessor the land taken a fingle Bond, that it should be void, qd' alii Justiciarii concessor the land taken a fingle Bond, that it should be void, qd' alii Justiciarii concessor the land taken a fingle Bond, that it should be void, qd' alii Justiciarii concessor the land taken a fingle Bond, that it should be void, qd' alii Justiciarii concessor the land taken a fingle Bond, that it should be void, qd' alii Justiciarii concessor the land taken a fingle Bond, that it should be void, qd' alii Justiciarii concessor the land taken a fingle Bond, that it should be void, qd' alii Justiciarii concessor the land taken a fingle Bond, that it should be void, qd' alii Justiciarii concessor the land taken a fingle Bond, that it should be void, qd' alii Justiciarii concessor the land taken a fingle Bond, that it should be void, qd' alii Justiciarii concessor the land taken a fingle Bond, that it should be void, qd' alii Justiciarii concessor the land taken a fingle Bond tak ferunt; for by the Except, it appears that it was not the Intent of the Statute that they should be fet to Bail, and so the Bond is taken in other Form than the Stat. intended. And I conceive that as well in the same Case of 37 H. 6. as in the principal Case of Dive and Manningham Plo. Com. 67. The Bond which hath Condit. to (b) fave the Sheriff, &c. harmless (when the Sheriff against Law lets one to Bail who is not bail able) is against Law, and void by the Com. Law: And herewith agrees Wm. Wifebam's Cafe i 5 El. Dy. (c) 324. And in (d) 7 E. 4. one was in the Custody of the Sheriff by Force of aCapias directed to him upon an Indict. of Trefpass and the Party made a Bond to another (by the Nominat. of the Sheriff) upon fuch Condit. as the Stat, prescribes for the Surety of the Sheriff; and there it is held that the Bond is void, because the Act prescribes the Bond to be made to the Sheriff himself, and that is Part of the effential Form. So if the Sheriff adds to the Condit. that he shall be (e) kept without damage against the K. and Pl. &c. That shall make the whole Condit. void for the Reason aforesaid. So if the Sheriff or Gaoler takes a Bond of a Prisoner, with Condit. to be a true Prisoner, or to pay for his (g) Meat and Drink: So if the Sheriffadds another Thing to the Matter prescribed by the Stat. as to pay fo much Money for an Horse, &c. this Addit. makes the whole Bond void, for it is taken in other Form (touching the Substance of the Matter) than is prescribed by the Stat. And with all this agrees Plow. Com. in Dive and Manningham's Cafe, 67, 68, 69. But in Paf. 27 El. In the K. s Bench, in an Action of Debt brought by Sir Wm. Drury, late Sheriff of the County of Suffolk, upon a Bond of 20 1. against A. B. who demanded Over of the Bond, by which it appears that the Def. was only bound in it, and of the Condit. which was that one More whom the faid Sheriff had arrested by Force of Latitat out of the K.'s Bench, should appear in Person at the Day contained in the Writ, &c. and pleaded the Stat. of 23 H. 6. And that the faid Bond was taken in other Form, that the faid Act prescribed, &c. upon which the Pl. demurred in Law; and it was objected that there were three Variance from the Form prescrib'd by the Stat. sc. one in the Bond, and two in the Condit. In the Bond, because Pl. took but one (b) Surety, and the Stat. prescribes reasonable Surety of sufficent Persons (in the plural Number) having sufficient within the Counties where such Persons are so let to Ball in which Case there ought to be two Sureties at least

(b) Cr. Eliz. 672,808, 852. Noy 40-Cr. Jac. 286. Cr Car. 446. 1 Mod. 228. 2 Mad. 181.

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and here is but one Surety, and the (a) plural Number can't (a) Post. 102. b. be fatisfied with the fingular; and so against the Words of the Plowd. 69. 2. Act, for the more and the more able the Sureties are, they will the rather cause him who is bailed to appear, and thereby Justice will proceed with more Expedition, and so against the Intention of the Stat'. And with all this agrees the Opinion of Montague Ch. Just. of the Com. Pleas in (b) Dive (b) Plowd. 69.2. and Manningham's Case. Also in the Condition, first, the Words are, That the Prisoner shall appear in (c) Person, (c) Cr. Eliz. where the Words of the Statute are, shall appear generally 672, 776 800. (without these Words in Person) 2. That he shall appear at 172, 173. the Day, &c. ad respondendum; whereas these Words, ad Owen 90. respondend, are more than the Stat. prescribes, and so like- Goldsb. 54, 66. wife for two Reasons the Condition varies from the Form 2 Leon. 78. prescribed by the Stat', and by Consequence the Bond void, as in the faid Cases of (d) 37 H.6. 7 E.4. and Dive and (d)37H.6.1.a.b Manningham's Case. But it was resolved by Sir Christoph. 7 E. 4. 5. b. Antea 100. 2.b. Wray, Sir Tho. Gawdy, and the whole Court of K.'s Bench, That the faid Bond was not made void by the faid Act. For as to the first, the Words, upon reasonable Surety of sufficient Persons, are added for the Surety of the Sheriff; and therefore if he will take but (a) one Surety, it is at his Peril, (e) Cr. El. 624, for he shall be amerced if the Defendant doth not appear, 672, 808, 852 and therefore the Stat. doth not make the Bond void in fuch Cr. Car. 446. Case; for the said Branch which prescribes the Form, requires Plowd. 69. a. that the Bond shall be made to the Sheriff himself, &c. by Noy 40. Name of his Office, and that the Prisoners appear, in which Clause no mention is made of the Sureties; so that the Intent of the Act was, That for a fmuch as it was at the Sheriff's Peril, to leave it to his (f) Discretion to take one or more for his In- (f) Cro. El. dempnity, and peradventure it will be better for him sometimes to take one who is sufficient, than two others; and altho' the Surety or Sureties have not sufficient within the same County, as the Stat. mentions, yet the Bond was good enough, for those Words of the Act, as to this Point, and more for Counsel or Direction of the Sheriff, than for Precept or Restraint to him, and that for the Safety of the Sheriff: For if the Defendant can't find two sufficient Sureties, having suffitient within the same County, the Sheriff is not bound to let him to bail. And this Resolution agrees with the old (g)Co.Lit.99.2. Rule, fa. (g) Quilibet potest renunciare juri pro se introduct . 2 Inft. 183,501. As to the said two Additions to the Condition of the said 3 Keb. 146. Bond, more than is in the Statute, It was refolved, it is true, Cart. 19, 21, there is a verbal Difference from the Form prescribed by the Lit. Rep. 41. Statute, but none in Subst. and Effect; for he who is so bailed Stamf. Cor. ought to appear in Person, for so much is implied in this 46. b. Word of the Act (appear,) and therefore at the Com. Law Co. Lit. 128. 2. when any Ten't or Def. was commanded to (b) appear in any 2 lnft 249. Court, he ought before the St. thereof made, in all Cafes to have Cawley 164

672, 808, 852

. N. B. 25. C. appeared 2 Lev. 123,180.

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(6) 5 Co. 4. b.

2 Bulitr. 53. (c) Dyer 364. pl. 29. Cr. Jac. 286.

(a)F.N.B.25.C appeared in proper Person; and therewith agrees (a) F.N.B. 25, and the Books before cited, fo for the fame Reason the other Addition is not material, for he who ought to appear, ought to appear ad respondend, & (b) parum different que re concordant. Et est ipsor legislator tanquam viva vox, rebus & non verbis legena imponimus. Vide 21 Eliz. Dyer (c) 364. there the Condition was in the Conjunctive, appear and answer, in the Copulative, and yet the Bond good. Tr. 27 E. liz. in the K.'s Bench inter Danby and Hethcote, in a Writ of Error upon a Judgment given in the Marshalfey, it was refolved. That if a Sher. or Gaoler for the Ease and Enlargement of any who is in his Ward, takes a Promise to save him harmless, that altho' the Stat. speaks only of an Obliga-(d) Cr. Eliz. 66. tion with Condition, yet it is in equal Mischief. (d) And Wray Ch. Just. said, That the Stat. would serve for little or no Purpole, if Promises should not be taken within the Sta-And the faid later Clause is general, sc. and if the Sheriff takes any Obligation in other Form, that it shall be void, within the Equity of which Words (any Obligation) an (e) 2 Rol. Rep. (e) Assumpsit is taken; for as it is said in the antient Verses,

Noy 76. O. Bendl. 100. Hetl. 175. 2 Bulftr. 213. Yelv. 197. Godb. 250,251 Cr.El.178,190, 200, 230, 271. 1 Leon. 132. Owen 97, 98. 3 Leon. 227,

228 1 Rol. 16. (f) 3 Inft. 149. Verba ligant homines, taurorum cornua fures, Cornu bos capitur, voce ligatur bomo.

Quando verba statuti sunt specialia, ratio autem generalis, generaliter statutum est intelligend. And it appears by the Preamble, that the Stat was made to avoid Perjury, (f) Extortion and Oppression, three most horrible and odious Sins, and therefore for the Suppressing of them, and for the Advancement of Truth and Justice, the Words of the Act shall have a benign and favourable Interpretion, in biis enim que funt favorabilia animæ, quamvis funt damnosa rebus, fiat aliquando extentio statuti. And the Extortion and Oppression which is done to Prisoners is the most odious, because it is sevire in dolentes, & addere afflictionem afflictis. And it is true, that before this Statute, the Sheriffs, Gaolers, &6. fometimes for Ease or Enlargement, and sometimes by Oppression and Dures, would extort from the Prisoners by Colour of their Offices divers Sums of Money and other Profits, and fo by such Pillage and Extort. they were enriched, and the Prisoners impoverished, and the Proceedings of Justice delayed. And it is well faid in Dive and Manningham's Case 68. a. That (g) Extortion is no other than Robbery, but is more odious than Robbery; for Robbery is appar rent, and hath always the Appearance of Vice, but Extortion carries a Visage of Truth, and is more difficult to be (h) 3 Inst. 149. tried or discerned; and is likewise oftentimes (b) accompanied with the damnable and damned Sin of Perjury, in Breach of the Oath which the Officer takes when he is admitted to his Office, and therefore it is the more odious

(g) Co. Lit. 368. b.

PART X. Beawlage I Caje.

(a) Extortio est crimen, quando quis colore officii, extorquet (a) Hutt. 53.

quod non est debitum, vel quod est supra debitum, vel ante Co. Lit. 368. b.

tempus quod est debitum; and it is called crimen expilatio- Cr. Car. 361.

Palm. 190.

Also it was said, That the said Assumpsit did not bind Dyer 355. the Prisoner at the Common Law, because the Considera-Hob 106.
tion was against Law. Vide 19 Eliz. Dyer, (b) Onley's 1 Leon. 19,179:
2 Bulltr. 230.

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Mich. 10 Jacobi Regis.

Alfrid Denbawd's Cafe.

Cr. Jac. 316,

Alfrid Denbawd alias Burnard, brought a Writ of Error in the Exchequer-Chamber against Peter Wood Jenk.Cent.288. ley, Hill 9 Jac. Reg. Rot. 1151. in the King's Bend And the Case was; that Peter Woodley brought Trespa against the said Alfrid and one Thomas D. Quare clausus fregit, at Aisbbarton in the County of Devon. The Desc dant pleaded Not guilty; and at the Affises in the Country Alfrid was found guilty, and the Plaintiff had Judgment gainst the said Alfrid. Whereupon the said Alfrid brough a Writ of Error, and the Error which was affigned, was Because one of the Jurors, of the principal Pannel appeared only at the Affises, upon which at the Prayer of the Plaintiff a Panel of Tales de Circumstantibus was retuned by the Sheriff in this Form: The Title was, Nomina cem talium, &c. and under-it he returned eleven Juro And it was argued, That this Judgment was erroned for two Reasons, 1. Because but one of the princip Pannel appeared only, and two at least ought to appear 2. That inasmuch as he entitled the Pannel of the Ta Nomina decem talium, he could not return eleven. As the first, The Award of the said Tales ought to be we ranted by the Statute of 35 H. 8. cap. 6. for at the common Law the Justices of Nist prius could not grant a Tales, and it was objected, That the Award of the Tales the Case at Bar, was not warranted by the faid Act; the Words of the Act are, And that the Justices shall a may proceed to the Trial of every such Issue, with the Persons that were before impannelled and returned,

F.N.B. 189. H. with those newly added, &c. So that these Words the Persons being in the plural Number, can't be satisfi rit

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with one (a) fingular Person; as upon the Stat. of (b) West. 2. (a) Dyer. 245. 0.11. Cum dom. &c. dederit eis Auditores compoti, &c. if one ac. pl. 64. counts before (c) one Auditor, in Debt for the Arrearages upon Plowd. 393.b. fuch Account, he shall wage his Law, as it is held in 20 H.6. (b) 2 Inst. 379, 41.b. and the Reason there given is, because the Stat. speaks 380. of Account before Auditors. Vide (d) 5 H.4. c.8. 11 H.4. 56.b. Co. Lit. 295. 2. 8H.6.15.b. 20H.6.17.a. 14H.6.24.b. 20H.6.41.b. 22H.6.35.a. 20 H. 6. 16. b. wid. 49 E.3.2.b. & 43 E.3.11.b. Nota Reader, there is not any Fitz. Ley 10. Act of Parl, which by express Words takes away the Wager of 2 Rol. 606. Law in an Action of Debt upon Arrearges of Acc't, but at the 4 H. 6. 25. b. Com. Law the Def. shall have his Law in an Action of Debt (d) 5 H.4 c. 8. brought upon Arrearages of Acc't, whether the Acc't be before one Auditor, or many, as appears in 38 H.6.5. a. but the Reason why the Def. shall not wage his Law when the Acc't is made before Auditors, is upon the Stat. of Westm. 2. c. 11. for now this Stat. has made the Auditors Judges of Record, because they have Power thereby to commit the Def. to Prifon, which none can do unless they be Judges of (e) Record; (e) 2 Inst. 380. and with this Reason, sc. that they are Judges of Record anee (f) 2 H. 6. 41. & 10 H.6. 24.b. 25.a. and for this Reason (f)20H.6.41.4. e was ousted of the Law by all the Just's in such Cases: But if the Acc't be before one Auditor only, it is out of the Stat', for he can't commit the Def. to Prison, and therefore remains t Com. Law. So the Lord who is found in Surplufage, the Stat. is made against the Accountant only, and the Lord can't be committed to Prison, and therefore he also remains at the Com. Law, as it is adjudged in 14 H.6.24.b. Vide 10 H.6 25.a. 8H.6.6.a. 20 H.6.41. b. And it appears by the Judgm. of the whole Parl. in (g) 5 H.4. c. 8. That in an Action of Debt up- (g) Dyer 145. on Arrearages of Acc't before (b) Auditors, that the Def. shall pl. 63. not wage his Law, but there Remedy is given by Examina- 295. 2 tion, to discern if the Matter lie in Acc't, and if not, then to 2 Inst. 380. allow the Def. his Law; and therefore the Books in (i) 43 2 Rol. 106.

E. 3. and 49 E. 3. are ill reported. And moreover the Coun-49 E. 3. 2. b. lel with the Pl. in the Writ of Error, cited the Case of 22 Dy. 145. pl. 63. H. 6. 47. b. where the Custom of foreign Attachment being alledged against Persons in the plural Number, shall not be latisfied with one; and the Case of Rediffeisin, where the (k) Plow 393 2. Stat. of Merton, cap. 3. faith, (k) Assumptis teoum Custodi-23 Ass. pl. 7. bus placitor' Coronæ Dom' Regis; this plural Number shall Br. Rediss. 3. not be satisfied with one, if there are more than one: And Rastal Redist. with that agrees 27 Aff. p. 7. 50 E. 3. 17. a. b. 39 H. 6. (m) Fitz. for-42. a. So in Grants made by Corporations, the plural faits 14. Number shall not be satisfied with one; as appears in the Br. Amendm. Case of the Cooks of London in Plow. Com. So in Writs, 15. I the Writ be that the Defendant falso fabricavit (m) di-Br. Count versa falsa facta, he can't declare upon one only. 35 H. 6. Plow. 84. b. 17. b. Vide 7 E. 4. 31. a. 20 H. 6. 45, &c. But it was (n) Cr. Jac. 316. telolved, That in Case when but (n) one of the princis 2 Rol. Rep. 210,

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pal Pannel appears, the Statute gives Authority to Justices of Nisi prius to award Tales de Circumstantibus: For it is enacted by the faid Statute, For the more Speedy Trial of Iffues to be tried by twelve Men hereafter to be had, that in every Writ of Habeas Corpora or Distringas with a Nife prius, where a full Jury shall not appear before the Justices of Assis or Nisi prius, or else after an Appearance of a full Jury, by Challenge of either of the Parties the Jury is like to remain untaken for Default of Jurors; that then the same Justices, upon Request made by the Party, Plaintiff or Demandant, shall have Authority by Force of this Act to command the Sheriff, or other Minister or Ministers we whom the Making of the faid Return shall appertain, we name and appoint, as often as need shall require, so many of such able Persons of the said County then present, &c. as shall make up a full Jury. By which Words without Question, altho one only appears, the Court may award Tales de 11. Then comes the Clause which has been mentioned before, which doth not restrain the Generality of the first Words. And the Cases put before, which give Author rity in the Nature of a Commission, as in the Case of Av ditors of the Account, (a) Rediffeifin, &c. are not to be refembled to this Case upon the said Act of 35 H. 8. which is made for more speedy Trials, which always, and all o ther Statutes of like Nature, shall be taken benign and favourably in Furtherance and Advancement of Expedition in Justice; and it is as great Mischief and Delay of Justice when one only, as when two or more appear, and therefore if the Body of the Act had been in the plural Number yet it should be construed to extend to the Case, when one only of the principal Pannel appears: And therewith agree the Opinion of the Court of Common Pleas in Mich. 7 88 Eliz. (b) Dy. 245. in the same Point, Sc. that the Justices of Affise and Nisi prius have Power to award Tales when on Juror only appears; for there it is faid, So was the Intertion of the Makers of the Statute, and there Brown held if two of the principal Pannel appear, and at the Prayer of the Plaintiff 12 de Circumstantibus are returned, and the the two Principal are drawn forth by Challenge; now the Trial shall be all by the Twelve de Circumstantibus: But the Lord Dyer makes a Quere of that: But at the Com Law, the Jurors of Tales passed in Trial without any Jura of the principal Pannel; and this Act has been always es pounded favourably: And therefore in Mich. (c) 16 8 17 liz. No Hundredor appeared, and all the Hundredors were returned upon the Tales: And 23 Eliz. Dyer 367. the have Power to grant a Tales de Circumstantibus, direct

ed Coronatoribus for Favour or Affection of the Sheni

(a) F. N. B. 189. H.

(b) Dyer 245. pl. 64.

(c) Dyer 338. pl. 42. (d) Dyer 367. pl. 24. X.

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PART X. by the faid general Words of the faid Act of 35 H. S. Mich. by the faid general words (a) Casar Judge of the Court of (a) Poph. 35.
35 & 36 Eliz. Julius (a) Casar Judge of the Court of (a) Poph. 35. Admiralty, brought an Action in the K.'s Bench for flanderous Words against Philip Corfini. The Def. pleaded Not guilty, and faid, that he was an Alien born, &c. and prayed Trial per medictat' lingue, and it was granted; and at the Nisi prius in Lond. but fix Englishm. and five Aliens appeared, and the Pl. prayed a Tales de Circumstantib' per medietat' (b) Dyer 144 lingue, and it was granted, so that there wanted one Alien; Dalt. 22. pl. 5. and the Record was, Ideo alius alienigena de Circumstantib' 3 Inst. 27. per vic' Lond' ad requisition' infranominati Julii Cæsaris Jenk Cent 216. per mandatum Justic de novo apposit, cujus nomen panell' 841. pred' affilatur secund form' statuti in bujusm' casu nup' editi Stamf. Cor. & provisi, Qui quidem jurator sic de novo appositus viz. Chri- 139. 2. b. hisnus Dethick alienigena exact' similit' venit, ac in jurat' ill' simul cum aliis juratorib' prod' prius impanellatis & juratis juratus fuit, and the Jury found for the Pl', and affested Damages to 100 l. And it was moved in Arrest of Judgm', That no Tales is to be granted de Circumstantib', when the Trial is permedietat lingue by the Just's of Nisi prius, by the said Act of 35 H. 8. for three Reasons. 1. The Tales ought to colue the Nature of the principal Pannel, and that always is ad requisition' defendentis, and in this Case the Pl. prays the Tales. 2. That the Words of the faid Act are in the plural Number, The Jury is like to remain untaken for Default of Jurors: And here it was but for the Default of one Juror. . The Act gives no Authority in this Case to the Justices o grant a Tales, for in the former Part of the Act it spoke of the (c) Freehold of the Jurors, and of Issues to be return- (c) Poph. 37, 36. d upon the Jurors; and an Alien has no Freehold, neither Cr. El. 841. hall issues be returned upon him. Also the Statute saith, there be any Default of Jurors, others of the same County hall be returned, &c. and an (d) Alien is not properly faid (d) Co. Lie. fany County: & hiis non obstantibus, because the Stat.was Poph. 36. ade for the speedy Execut. of Justice, it shall be expounddiavourably to effect the Intent and Purpole of the Makers Calvin's Cafe. the Act, and Judgment was given for the Plaintiff. As to the 2d Objection which has been made, it was olved, That the Title was the Misprisson of the Sheriff; nd it can't be taken that the Justices granted Tales only of ten, but of as many as in all wou'd make a Jury: And (e) Cr.Jac.303.

At appears, because eleven were returned, and eleven forn with him of the principal Pannel; and therefore it as relolved, That this Misprision of the Sheriff should amended, and Decem put out of the Title; and then Title would be good and formal, Nomina talium, &c. it may be Nomina juratorum de novo apposit' secundum mam statuti.

19, 60, &c.

Note

Alfrid Denbawd's Cafe. PART X

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Note Reader, at the Common Law in the Granting of a Tales, five Things are to be considered, 1. The Time of the Granting, &c. of it. 2. The Number of the Tales, 3. The Order of them. 4. The Manner of Trial, fc. either. by them with others, or by them only. 5. The Quality of

them are to be confidered:

Co. Lit, 158. 2.

As to the first, four Things are to be considered. i. That (a) 2 Rol Rep. the Time of the Granting of them is upon (a) Default of fo many of those of the principal Pannel, that there can't be a full Jury: 2. That at the Time of the Granting of them, the principal Array stands, for Tales are Words similitudinary, and have Reference to the Resemblance which at that Time ought to be in effe; and therefore if the Array be quashed or all the Polls challenged and tried out, no Tales shall be awarded, for at that Time non funt quales, but in such Case ? new Ven' fac' shall be awarded; but if at the Time of the Granting of the Tales the principal Pannel stands, and after-(b)Dy.78.pl.41. wards is (b) quashed, as is aforesaid, yet the Tales shall stand, for it is sufficient if there were quales at the Time of the Granting them; and that appears in 34 H. 6. Enquest 30. 3. It is to be observed; That he who is meerly Defen, can't (c) Cr. Car 484. pray a Tales, till the (c) Plaint. has made Default. 4. In some Case a Tales shall be granted after a full Jury appears and it fworn; as if a Jury be charged; and afterwards before the Verdict given in Court one of them dies, a Tales shall be a-(a) Stamf.Cor. warded; and no new Ven' fac'; and therewith agrees (d) is H. 4. 10. a. So if any of the Jurors impannelled die before they appear, and that appears by the Return of the Sheriff the Pannel shall not abate, but if need be a Tales shall be a warded. Vide (e) 20 E. 4. 11. b. And the Time of the Challenge and Trial of the Tales is after the principal Pannel tried; and if the principal Pannel is affirmed, (f) the same Triers shall try the Tales, but if it is quashed; then the two Triers of the principal Pannel shall not try them. (g) 9 E.4

(4) Stamf. Cor. 155. b. (f) Co. Lit.

155. b.

(g) Co. Lit. 158. 2-

155. 2.

46. b. 14 H. 7. 1. b. & 33 H. 6. 29. vide 19 H. 6.48. a.b. As to the 2d, sc. the Number; 2 Things are to be observed (b) Stamf.Cor. 1. In all Cases the Tales ought to be (b) under the Number of the Principal in the Venire fac' (unless it be in Case of a (i) 2 Rol. 672. Appeal) as in (i) Attaint under 24, and in other Action where the Venire fac' is of 12 under 12, and the Rest why more may be granted in an Appeal on the Part of the Plaintiff is, because the Plaintiff may challenge peremp torily, and if Default be in the Plaintiff, then the De fendant may pray a Tales; and the Reason is in favora vite, and that he may dispatch and free himself of Tro ble and the Question of his Life, for fear that his Win nesses should die, &c. and therewith agrees 14 H. 7.7. 37 H. 6. 12. 4. 18 E. 4. 6. b. 16 E. 4. 6. b. and therefor

the Book in 48 E. 3. 1. feems to be misprinted. Vide 49 E. 1. L. b. & 48 E. 3. 28. The 2. that the Number ought always to be certain, as 10, or 8, or 6, or 4, &c. Vide Octo tales Br. 11. But now upon the faid Act of 35 H. 8. a Tales de Circumstantibus may be granted as well of an (a) (a) Cr.Jac.316. incertain, as of a certain Number, and that by Force of the Words of the said Act, sc. so many, &c. as shall make up a

full Jury.

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As to the third, sc. the Order, it is to be known, that always in every new Tales the Number shall be diminished, u if the first be 10, the second shall be 8, and so always less; and therewith agrees 14 H. 7. 1. b. Tit. Tales Br. 15. Vide 47 Aff. P. 10. But if a Tales is awarded, and it is afterwards quashed by Challenge, he may have a new one of the same Number as before; and therewith agrees 20 H. 6. 40. 4.

As to the fourth, fc. To the Manner of Trial, fc. by them with others, it is common every Day, and by them only, when after the Granting of 10 Tales and octo Tales the principal Pannel is quashed, there the Trial may be only of the Tales, or if the Tales do not amount to a Jury, a Tales to supply the former Tales may be granted; and therewith

sgrees (b) 36 H. 6. Tit. Enquest 30.

As to the fifth, sc. to the Quality of the Tales, they ought ron. 155. b. to be of the (c) fame Quality as the Principals are; and (c) Cr. El. 305. therefore if the first be per medietatem lingue, of English and Aliens, the Tales ought to be so, so if the Principal be out of a Liberty, and all those Things which are required by the Lew in the Principals, are required in the Tales. Vide 4. E. 4. 11. 7 H. 6. 40. a. 30 Aff. p. 42. And afterwards by the Advice of all the Justices of the Common Pless, and Barons of the Exchequer, the Judgment was attirmed; and so the principal Case at Bar has been adudged by all the Justices of England, and all the Barons of the Exchequer.

Nota Reader in Affife, if so many of the Recognitors ske default, that there are not 12, the Justices of (d) As- (d)Cr.Car.341. sse can't award a Tales de Circumstantibus, for altho' Justios of Affise are named in the said Act of 35 H, 8. as well as ffices of Nisi Prius, yet forasmuch as the laid Act doth rigive Power to Justices of Assile or Nisi Prius, but where the Trial shall be by twelve Men in every Writ of Habeas Corpora, or Distringas with Nisi Priis and that can't be in Affife: For, Affife capiantur 8 Co. 57. 2.

Proprio Com' and never can be taken by Nisi Prius proprio Com' and no Exposition can be made against expreis

(b) Stamf. Co.

Alfrid Denbawd's Cafe. PART X.

(a) 2 Bulft. 179. express Words; for that would be (a) Viperina expositio que corroderet ventrem textus: And of fuch Opinion was Car. lyn Chief Justice in his Time, and Gerard Attorney General, and after them Wray and Anderson Chief Justices, Ju-Rices of Affile in Norfolk Circuit.

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Humfrey Lofield's Cafe.

Thomas Young and Dorothy his Wife, brought an Action ; Brownl. 61. of Debt against Thomas Milton and Anne his Wife Exe- Hob. 276. cutrix of Humfrey Lofield, upon a Bond of one hundred Pounds, made 20 Decemb. Answ 6 Fac. Regis by the faid Hum Lofield to the faid Dorothy dum fole fuit. The Defendants demanded Oyer of the Bond and Condition, which was, That if the within bounden Humfrey Losseld, his Executors, Administrators and Assigns, and of every of them. shall well and truly observe, perform and keep all and fingular the Covenants, Payments, Reservations, Grants, Articles and Agreements contained in a Pair of Indentures bearing Date the Day of the Date of the Obligation made between the said Humfrey and Dorothy dum sola fuit, which on his and their Part, &c. And pleaded, That by the faid Indenture, which they shewed forth, the faid Dorotby, in Confideration of the Rent after by the same Indenture referved, demised to the faid Humfrey Lofield a Wine-Cellar in Gravesend, To have and to hold to the faid Humfrey Lofield, his Executors and Affigns, after the Feast of the Nativity of Christ then next following, pro termino unius anni integri extunc prox' sequentis, & si in fine dicti-unius anni ambe partes placerent, agreerent, & contentate forent, quod eadem presens dimissio foret renovata, sive continuata pro aliquo longiori tempore, tunc babend' & tenend' dimissa pramissa diel Humfrido Lofield executoribus & assignatis suis ab & post dictum festum

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Nativitatis Dom' tunc prox' sequen' datum Indentur' usque plenarium finem & terminum trium annorum extunc prox' sequent' reddendo inde annuatim durante dicto termino dicta Dorother, executoribus & assignatis suis 401. ad quatuor asual dies festos, sive terminos, &c. sc. the Annunciation, &c. with Clause of distress if the Rent was arrear by the Space of ten Days after any of the Feasts, &c. and pleaded, That he occupied the faid Cellar for the Space of the faid first Year, and at the End of the faid Year performed all the Covenants, Payments, Refervations, &c. in the faid Indentures, &c. The Plaintiff replied, and for Breach shewed, That the faid Humfrey Lofield did not pay 101. due in the faid first Year at the Feast of the Birth of Christ for one Quarter. Upon which the Def. demurd in Law. And this Plea began in Communi Banco Trin. 10 Jac. Reg. Rot. 3434. And it was argued by the Serjeants of Counfel with the Defendants, That the faid Leffee should not pay any Rent for the first Year, and that for three Reafons: 1. Because the Reservation, as it is made, depends upon a Contingency, sc. if at the 11:2 236 End of the first Year both Parties should agree that the Leafe should, be renewed and continued for any longer Time, then to have and to hold the faid Cellar to the faid Humfrey from the Feast of the Birth of Christ next ensuing the Date of the Indenture for three Years, Reddendo inde annuarim durante dicto termino dicta Dorothea, &c. 40 l. So that the Residendo depends upon the faid contingent, which pever took Effect, for the Leafe was not continued beyond the first Year. 2. The Reservation of the Rent is durante termino prad which being spoken in the fingular Number, shall relate only to the Term of three Years last thentioned, and not to the Term of one Year, which was certain and compleat before the Contingent. 3. That every (a) 2 Sand. 166, (a) Referention and Exception shall be taken stricte against the Leffer, and beneficially for the Leffee, because every Reference charges and incumbers the Land demifed; and the Words of Reservation are the Words of the Lessor, and the Referention is his Act, and therefore shall not be extended beyond the Words; and so it is held in Hill and Grange's Cafe in Plow. Com. 171. a. and to this purpose the common Cafes in 12 E. 3. Tit. Aff. 86. 17 E. 3. 52, & 17 Aff. p. 10. 10 E. 4. 18, b. 27 H. 8. 19. a. and divers others were cited. And it was further faid, That if (b) two Tements in common join in a Grant of an Ox, or a Pair of gilt Spurs, or an Hawk, the Grantee shall have two Oxen, &c. but if they make a (c) Gift in Tail, or a Lease for Life or Years, rendring an Ox, &c. to them and their Heirs, they during their Lives, nor their several Heirs after their Deaths, shall have but one Ox, &c. And so if a Man makes a Gitt

Plow. 171. 2.

(b) 5 Co. 7. b. Co. Lit 196.b. 197. a. 267. b. Plow. 171. a. 140. b. 161. b. Verk fect. 106. (c) Co. Lit. 197. a. Perk.fed. 107.

Humfrey Lofield's Cafe. PART X.

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in Tail of two Acres, (a) one at the Common Law, and (a) Port 107, b. the other in Borough English, rendring an Ox to him and his Heirs, and the Donee having two Sons dies, the elder Son inherits one Acre, and the Younger the other, in this Cafe the Donor or his Heirs shall have but one Ox, because the Refervation shall be taken strictly against him and his the Refervation shall be taken strictly against militaria in the Brownl. Heirs. But it was resolved, That the said (b) Reservation (b) Brownl. Heirs. But it was resolved, That the said (b) Reservation (6) Brownl. should extend to the first Year; for the proper Place of a Refervation is to come after the Limitation of all the Estates: And therefore if a Man by Deed indented demiseth Lands to A. babendum to him for Life, the Remainder to B, and to the Heirs of his Body, and for want of Iffue of his Body, to remain to D. in Tail, or for Life, Reddendo inde to the Lessor and his Heirs an annual Rent, this Reservation shall extend to all the Estates before. Vide (c) 34 E. 3. (c) 34 E. 3. Avonce Avoury 258. And altho' the future Term is incertain, yet it is certain that the Leffee shall have the Cellar for one Year, and the Refervation shall (d) extend to it, for durante (d) i Brownl. termino pred'altho' it is in the fingular Number, yet it is a 61. Hob. 276. collective Word, and shall have Relation to every Term demised by the Indenture: And it is to be observed, That if the Leffee had held the Cellar beyond the faid first Year, that the Refervation had extended without Question to the first Year; and the Consideration of making the Lease, was only in Consideration of the Rent reserved in the said Indentures; and in ancient Time Rent reserved upon Leases, &c. was called vivus redditus, because the Lessor (e) lived (e) Co. Lit. by it; and vide Plo. Com. Hill and Grange's Case 171. such 143. a. Construction shall be made in Case of Reservation of Rent, (f) Dy. 376. that the Lessor shall not lose his Rent at any Day, &c. And in pl. 27.
Hill. (f) 23 El. Rot. 1410. in Communi Banco, Dionise Pafe 1 Vent. 91. er broughta Replevin against George Prowse for taking of 2 Brownl. 300. is Cattle at Halberton, in a Place called Terleigh Down in (g) Cro. Car. be County of Devon; the Case, as appears by the Record, 400. rasfuch: A Leafe was made of an House and Land for Co. Lit. 324.b. lears, if the Lessee should so long live; and afterwards the 4 Co. 36. 2. effor by his Deed indented granted the Meffuage and Dy. 125. pl.45, and to another, To have and to hold the Reversion to the 233, pl. 10, 11 missacturam of the Lessee, aut aliter acciderit, Reddendo 30 E. I. de annuatim to the Grantor and his Heirs, cum reversio Grant 86. red acciderit 9 s. 4 d. per annum; the Lessee died, the Fitz Feoffment mantor of the Reversion distrained for the Arreara- 22 after; and in that Case four Points were resolved 2 Rol. 1903.

That by the Demise of B N C 267.

Messure and Land for Life, the (g) Reversion thereof 35 H. 8.

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(a) Plowd. 103. past 3 but by grant of the (a) Reversion Land in Possession shall b. 152. a. Lit, Rep. 18. 5 Co. 124. b. Cr. Car. 400, Godb. 451. Kelw. 18. b. (A) Moorss, 56. Co. Lit. 183. a. 1 Cus4. 2

not pals. 2. By the Grant of the Meffuage and Land, (b) Habendum reversionem, &c. for Life after the Death of the Les-see, &c. that the Habendum is good; for in Judgm. of Law, nothing but the Reversion is granted by the Premisses; and as in Throckmorton's Cafe, Plo. Com. 147. when a Reversion is granted, Habendum the Land, the Habendum is adjudged good : So when the Land is granted Habendum the Reverfion; after the Death of the Lessee, &c. it is in Construction on as much as to fay, to take Effect in Poffession after the Death, &c. Also the Habendum had been good, altho no mention had been made either of the Land, or of the Reverfion in the Habendum; for the principal Office of the (c) Habendum is to limit the Estate of the Land contained in the Premisses. 3. It was resolved, That by the said Reservation, the Rent should not commence before the Reversion fell into (d) Possession; and these Words, cum reversio prad accide. rit, shall be expounded according to the Intent of the Parties, which was not that the Grantee for Life should pay the Rent referved, before he might take the Profits to raise the Rent out of them. 4. That the Distress was well taken for Executors 112. the Arrearages after the Death of the Leffee, and not for the Arrearages incurred before. Note by the Lord Dyer in 23 EL (e) 376, 377. which proves that Refervations shall be expounded according to the reasonable Intention of the Parties, to be collected by the Words of their Deed; and it is apparent, that the Intention of the Parties in the

(c) 2 Rol. 65. Cb. Lit. 6. 2. 2 Co. 55. 2. 9 Co 47. b. (d) Dyer 377. pl.27. 2 Brownl. 300. Sand. 166. Cr. El. 323. 1 Vent. 91. 17 E. 2.

(e) Dyer 376, 377. pl. 27. 2 Brownl. 300. 1 Vent. 91. 2 Saund- 166.

> Nota Reader, as to the said Case put at the Bar, of a Gitt in Tail of one (f) Acre at Common Law, and of one Acre in Borough English rendring an Ox, and afterwards the Donce dies, having Issue two Sons, so that the one Acre descends to the one, and the other to the other, that but one Ox shall be paid. For the better Understanding of the Law, and of the Reason thereof in that Case and other the Like, it is to be known, That there is a Difference in Law, when by Operation of the Law without the Add the Party, there shall be a Multiplication of one entire Ser vice, and when not. And therefore there is a Difference betwixt very Lord and very Tenant, and between the Do nor and Donee, or the Leffor and Leffee: For in the Cafe of very Lord and very Tenant, as well the Annua

> as the Casual entire (g) Services in many Cases shall be multi-

Case at Bar, was, That the Lessee should pay Rent for the Time which by Force of the faid Leafe he occupied the faid

Cellar: But foralmuch as the Bond was forfeited, the Court moved the Plato take his Arrearages, Costs and Damages, with

which he was contented, and so no Judgment was given.

(f) Ant. 107.4.

(e) 8Co.105.b. 6 Go. .. b.

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multiplied, as appears in Bruerton's Case, in the fixth Part 6Co. 1. b. 2. a. of my Reports, and in the eighth Part of my Reports f. 102. Co.Lit. 149.2 b. in John Talbot's Case. But in the Case of the Donor and Donee, or Leffor and Leffee, the entire Rent reserved shall not, by any Division either of the Reversion or of the Possession by Act in Law, be multiplied: And therefore if in the faid Case of one Acre at Common Law, and the other in Borough English, the Donce dies having Issue two Sons, this several Descent which is an Act in Law shall not charge each of them with the entire Service, no more than if the Dopor in the same Case dies having Issue two Sons, so that the Reversion descends severally by Act in Law; yet the Donee nor their Heirs shall be charged but with one entire Service. So if a Man is seised of two Acres, one of the Part of his Father, and the other of the Part of his (a) (a) 1Co.100.b. Mother, and makes a Lease of both for Life, reserving year- Br. descent 11. ly a Lamb to the Lessor and his Heirs, and the Lessor dies 14 H. 8. 8. b. without Issue of his Body, the several Heirs shall not have 8 Co. 54. a. two Lambs, but one Lamb only. So if a Man gives Land to two Men, and to the Heirs of their two Bodies begotten, yielding an (b) Hawk, and they die, their feveral Issues (b) Co. Lit. hall pay but one Hawk: And the Reason of these and o- 197. b. ther like Cases, that the entire Services in these Cases shall not encrease, is, because the Reservation of the Donor or Leffor is his Title only, and when he himself reserves but me, the Law, which is always grounded upon Right and Equity, will never encrease it, or give him more than he imself has reserved. And the Reason of this Difference rars in Woodland's Plow. Com. 94. For Encroachment by he Donor upon the Donce, or by the Leffor upon the Leford and Tenant; and the Reason is, because when the Donor and Lessor, or the Heir of any of them avows, he ught to shew the original Reservation, by which it will ppear, how much the Donor or Lessor has reserved. And with this agrees the Judgment in Sir Wm. Foster's Case in Cr. Car. 81. be eighth Part of my Reports, f. 65. a. That the Donor or 8 Co. 65. a. effor need not in an Avowry alledge Seifin, neither shall 1 Brownl. 170. Encroachment upon them bind them, because the Referation is their Title. But if there be Lord and Tenant, ad the Tenant makes a Gift in Tail, or a Leafe for Life, Remainder in Fee, there Encroachment by the Lord pon the Donee or Lessee shall bind them, for the Plow. 55. a. ord need not shew the Commencement of the Seig- 9 Co. 34. a. ord need not shew the Commencement of the Seig- 9 Co. 34. a. ith agree 20 E. 3. Avovery 131. 5 E. 4. 2. a. and F. N. B. 11. d. 3 11.4. The same Law is, when the Law creates the Tenure;

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0, 192. a. Lit, Rep. 18. § Co. 124. b. Cr. Car. 400, Godb. 451. Kelw. 18. b. (A) Moorss, 56. Co. Lit. 183. a. a Cu a4. a.

(a) Plowd. 103. past 3 but by grant of the (a) Reversion Land in Possession shall be 192. 2. By the Grant of the Messuage and Land, (b) Habendum reversionem, &c. for Life after the Death of the Leffee, &c: that the Habendum is good ; for in Judgm. of Law, nothing but the Reversion is granted by the Premisses ; and as in Throckmorton's Cafe, Plo. Com. 147. when a Reversion is granted, Habendum the Land, the Habendum is adjudged good : So when the Land is granted Habendum the Reverfion; after the Death of the Lessee, &c. it is in Construction on as much as to fay, to take Effect in Possession after the Death, &c. Also the Habendum had been good, altho no mention had been made either of the Land, or of the Reverfion in the Habendum; for the principal Office of the (c) Habendum is to limit the Estate of the Land contained in the Premisses. 3. It was resolved, That by the said Reservation, the Rent should not commence before the Reversion fell into (d) Possession; and these Words, cum reversio prad acciderit, shall be expounded according to the Intent of the Parties, which was not that the Grantee for Life should pay the Rent referved, before he might take the Profits to raise the Rent out of them. 4. That the Distress was well taken for the Arrearages after the Death of the Leffee, and not for the Arrearages incurred before. Note by the Lord Dyer in 23 El. (e) 376, 377. which proves that Refervations shall be expounded according to the reasonable Intention of the Parties, to be collected by the Words of their Deed; and it is apparent, that the Intention of the Parties in the Cafe at Bar, was, That the Leffee should pay Rent for the Time which by Force of the faid Leafe he occupied the faid Cellar: But foralmuch as the Bond was forfeited, the Court moved the Pl. to take his Arrearages, Costs and Damages, with

2 Co. 55.2. 9 Co 47. b. (d) Dyer 377. pl.27. 2 Brownl. 300. 2 Sand. 166. Cr. El. 323. Went bi. 17 E. 2. Executors 112.

(c) 2 Rol. 65. Co. Lit. 6. 2.

(e) Dyer 376, 377. pl. 27. 2 Brownl. 300. 1 Vent. 9 L 2 Saund. 166.

(f) Ant. 107.2.

which he was contented, and so no Judgment was given. Nota Reader, as to the said Case put at the Bar, of a Gitt in Tail of one (f) Acre at Common Law, and of one Acre in Borough English rendring an Ox, and afterwards the Donce dies, having Issue two Sons, so that the one Acre descends to the one, and the other to the other, that but one Ox shall be paid. For the better Understanding of the Law, and of the Reason thereof in that Case and other the Like, it is to be known, That there is a Difference in Law, when by Operation of the Law without the Add the Party, there shall be a Multiplication of one entire Ser vice, and when not. And therefore there is a Difference betwixt very Lord and very Tenant, and between the Do nor and Donee, or the Leffor and Leffee: For in the Case of very Lord and very Tenant, as well the Annua as the Casual entire (g) Services in many Cases shall be multi-

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multiplied, as appears in Bruerton's Case, in the fixth Part 6Co. 1. b. 2. a. of my Reports, and in the eighth Part of my Reports f. 102. Co.Lit. 149.2b. in John Talbot's Case. But in the Case of the Donor and Donee, or Leffor and Leffee, the entire Rent referved shall not, by any Division either of the Reversion or of the Possession by Act in Law, be multiplied: And therefore if in the faid Cafe of one Acre at Common Law, and the other in Borough English, the Donce dies having Issue two Sons, this several Descent which is an Act in Law shall not charge each of them with the entire Service, no more than if the Donor in the same Case dies having Issue two Sons, so that the Reversion descends severally by Act in Law; yet the Donee nor their Heirs shall be charged but with one entire Service. So if a Man is feifed of two Acres, one of the Part of his Father, and the other of the Part of his (a) (a) 1Co.100.b. Mother, and makes a Leafe of both for Life, referving year- Br. descent 11. ly a Lamb to the Lessor and his Heirs, and the Lessor dies 14 H. 8. 8. b. without Islue of his Body, the several Heirs shall not have 8 Co. 54. 2. two Lambs, but one Lamb only. So if a Man gives Land to two Men, and to the Heirs of their two Bodies begotten, yielding an (b) Hawk, and they die, their feveral Issues (b) Co. Lit. hall pay but one Hawk: And the Reason of these and o- 197. b. ther like Cases, that the entire Services in these Cases shall of encrease, is, because the Reservation of the Donor or Lessor is his Title only, and when he himself reserves but me, the Law, which is always grounded upon Right and Equity, will never encrease it, or give him more than he imself has reserved. And the Reason of this Difference ppears in Woodland's Plow. Com. 94. For Encroachment by he Donor upon the Donee, or by the Lestor upon the Lesee, shall not bind them in an Avowry, as it shall betwixt ord and Tenant; and the Reason is, because when the bonor and Lessor, or the Heir of any of them avows, he ught to shew the original Reservation, by which it will ppear, how much the Donor or Lessor has reserved. And with this agrees the Judgment in Sir Wm. Foster's Case in Cr. Car. 81. be eighth Part of my Reports, f. 65. a. That the Donor or 8 Co. 65. a. effor need not in an Avowry alledge Seifin, neither shall Encroachment upon them bind them, because the Reseration is their Title. But if there be Lord and Tenant, nd the Tenant makes a Gift in Tail, or a Lease for Life, Remainder in Fee, there Encroachment by the Lord pon the Donee or Lessee shall bind them, for the Plow. 55. a. ord need not shew the Commencement of the Seig- 9 Co. 34. 2. ith agree 20 E. 3. Avowry 131. 5 E. 4. 2. a. and F. N. B. 11. d.] 1.4. The same Law is, when the Law creates the Tenure;

1 Brownl. 170.

(a) Co. Lit.

(a)8Co.sos.b. 103. a. b. 6 Co. 1, 2. Co. Lit. 149,

a. b.

as if Lord and Tenant be by Fealty, and the yearly Rent of a Lamb, and the Tenant makes a Gift in Tail to two Men, and to the Heirs of their Bodies without any Refer. vation, now the Donees shall hold of the Donor by the like Services as he holds (a) over, Lit. 4. b. 39. H. 6. 7. a. Sc. yer if the Donees having lifue die, their feveral lifues shall pay but one Lamb, for the Donor or his Heirs in Avowry ought to shew the Tenure between the Lord and the Tenant, and the Gift in Tail, so that it will appear to the Court, that but one Lemb at the Time of the Gift was due; and the Law, to the Prejudice of the Heirs of the Donees, will not encrease it. But there is a Difference betwixt those which are entire Services; for some Services by the meer Operation of the Law shall be encreased; and therefore if a Man seised of two Acres, one at the Common Law, and the other of the Custom of Borough English, makes a Gift in Tail of both; and the Donee having Issue two Sons dies, both the Sons shall do Fealty: The same Law of Homage, if it be referved by the Party, or created by the Law. So if the Donor dies having Issue two Sons, both the Sons shall have Homage and Fealty. And so there is a Difference betwixt entire (b) Services of Profit and of no Truft, and Services of Trust and no Profit. The same Law is, if there be Lord and Tenant by Knight Service, and the Tenant gives the Tenancy to two Men, and to their Heirs of their Bodies, and they die having Issue, their Issue shall hold severally by Knights Service, for that is for the Defence of the Lord and of the Realm: And so another Difference betwist an entire Service for the private Profit of the Lord, and an entire Service for the publick Defence of the Realm. Vide all these cited in John Talbor's Case; and by these and other Differences there put, all the Books directly proving them, are well without any Contrariery or Difficulty agreed, THE be colleged to proceed the college

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In Communi Banco.

Arthur Legat's Case, in Subversion of pestilent patents of thievish concealers.

Dwardus Cockle nuper de Wimondham in comitate prædicto husbandman attachiatus fuit ad respondendum. Arthuro Legat generoso, de placito quare vi & armis sex acras pasture & sex acras bosci cum pertinentiis in Wimondham quas Johannes Smith generosus præsato Arthuro dimist ad terminum qui nondum præteriit, intravit, et ipsum a sirma sua præd' ejecit, & alia enormia ei intulit, ad grave dampnum ipsius Arthuri, & contra pacem Dom' Reg' nunc, &c. Et unde idem Arthurus per Robert Love Attorn' suum queritur, quod cum prædict' Johannes decimo nono die Octobris.

Arthur Legat's Cafe. PART X.

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tobris anno regni Domini Regis nunc Angliz octavo apud Wimondham dimifisset eidem Arthuro tenementa prædicta cum pertinentiis habendum & tenendum eidem Arthuro executoribus & administratoribus suis a festo Sancti Michaelis Archangeli tunc ultim' præterit' pro & durante termino 3 annorum extunc proxime sequentium plenarie complendorum & finiendorum virtute cujus dimissionis idem Arthurus in tenementa prædicta cum pertinentiis intravit, & fuit inde podeffionatus quouique prædictus Edwardus postea scilicet decimo die Aprilis anno regni dicti Dom' Regis nunc Angliz nono vi & armis, &c. tenementa præd' cum perti-nentile quæ pæd' Johannes eidem Arthuro in forma prædicta dimifit ad prædict' terminum qui nondum præteriit, intravit' & iplum a firma sua prædicta ejecit, & alia enormia, &c' & contra pacem, &c. unde dicit quod deterioratus est, & dampnum habet ad valentiam viginti librarum, & inde producit sectam, &c. Et prædictus Edwardus per Tho' Blofield attornatum fuum venit & defendit vim & injuriam quando, &c. Et dicit quod ipse in nullo est culpabilis de transgressione & ejectione prædictis, prout prædictus Arthurus superius versus eum queritur, & de hoc ponit se super patriam; & præd' Arthurus similiter; Ideo præceptum est vicecomitiqued venire faciat hic a die Sanctæ Trinitatis in tres septimanas duodecim, &c. per quos,&c. Et qui nec,&c. Ad recogn', &c. Quia tam, &c. Ad quem diem Jurata inter partes prad' de prædicto placito posit' fuit inter cas in respectum hic usq; ad hunc diem scilicet in octabis Sancti Mich' tunc prox sequent', Nifi Justic' Dom' Reg' ad Assisas in comitatu præd' capiend assign per formam statuti,&c.die Lune quintodecimo die Julii prox præterit' apud Cast' Norwic' in comitatu præd' praus venifient. Et modo hic ad hunc diem ven tam præd' Archurus quam præd' Edward' per attornatos suos prædictos, & przelat Juffic ad Affilas coram quibus, &c. mis hic recordum hum in hac verba, Poltea die & loco infracontent' co-ram Edw. Coke milite capitali Justic' Dom' Regis de banco, & Johan Crooke milite uno Justic' dicti Dom' Reg'ad placita coram iplo rege tenend' assign' Justic ejusd' Dom' Reg' ad Assias in comitatu Nors. capiend' assign' per formam statuti, &c. ven' tam infranominat' Arthur' Legat quam infrascript' Ed' Cockle per attornatum ejus infracontent'. Et Jur' Jur'e un-

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PART X.

de infra fit mentio exact' fimiliter vener', quorum duode cim, videlicet, Robertus Seaman, Adam Bale, Bartholomæus Harrison, Thomas Reynaldes, Willielmus Bldwell, Henricus Howlet, Thomas Crooke, Richardus Ruffell, Tho' Tilney, Johannes Freeman, Johan' Jewell & Edmund' Johnfon in Jur'm prædict Jurat existunt, Postmodumque unus Jur præd, videl t, prædictus Robertus Seaman, ex affensu ambarum partium prædict, ac per mandatum Justiclarior predictorum, a panello prædicto penitus extrahitur, &c. 1deo ex assensu partium præd', Jur'a præd' ulterius ponitur in respectum, hic usque in Octabis Sancti Hillarii, Ideo vicecomes habeat corpora, &cc. Et appon' decem Tales, ad quem diem hie venit tam prædict Arthurus, quam prædictus Edwardus per Attornatos suos prædictos; Et vicecom' modo mandat, quod quoad diffringend' Bartholomæum Stone & ceteros Juratores in breve Dom' Regis fibi direct' nominat', breve illud adeo tarde fibi deliberat' fuit, quod propter brevitatem temporis nullam inde executionem facere potuit, sed quoad ponend' decem Tales unde in eodem brevi fiebat mentio, idem vicecom' modo mandat, quod executio inde patebat in schedula brevi illi annex' in qua quidem schedula continetur panellum de nominibus decem Juratorum, quorum nullus, &c. Ideo Jurata prædict ulterius ponitur in respectum hic usque a die Paschæ in quindecim dies, Nist Justic' Domini Regis ad Affilas in comitatu prædicto capiend' affign' per formam statuti, &c. die Mercurii in prima septimana Quadragefimme, apud Therford in comitatu prædicto Prius venerint, pro defectu Jur',&c. Ideo vicecom' distring' Juratores prædictos per omnes terras, &c. Et quod de exit', &c. Ita qued fint hic nifi, &cc. ad faciend' Jur m præd', &c.

Norf. st. Postea die & loco infracontent' coram Edwardo Coke milite, capitali Justic' Dom' Regis de Banco, & Johanne Crooke milite, uno Justiciar' dicti Domini Regis ad placita coram ipso Rege tenenda assignato Justiciariis ejustem Dom' Regis ad Assisas in comitatu Norfolcia capiendas assignatis per formam statuti, &c. venit tam infranominatus Arthurus Legat, quam infrascriptus Edwardus Cockle per Attornatus suos infracontentos; Et Juratores Jurata undo

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infra fit mentio exacti similiter venerunt, qui ad veritatem de infracontent' dicend', elect' triat' & jurat', dic' fuper facramentum fuum, quod nuper Rex & Regina Philippus & Maria, nono die Julii annis regnorum corundem Regis & Reginæ Philippi & Mariæ quarto et fexto, fuerunt seisiti de & in manerio de Wymondham in comitatu prædicto in dominico fuo ut de feodo, in jure coronæ fuæ Angliæ, unde terræ & tenementa in narratione infrafcrip' tunc fuerunt parcell', przdistifq; nuper Rege & Regina Philippo & Maria, fic ut preferrur, de & in manerio prædicto unde, &c. seisitis existentibus, iid' Rex & Regina cod' nono die Julii annis regnorum dictorum nuper regis & reginæ Philippi & Mariæ quarto & fexto, fecerunt literas suas patentes sub magno figillo suo Anglia, cuidam Georgio Howard militi, de pradictis terris & tenementis in narratione infrascripta nominatis, inter alia per nomina duarum peciarum terræ vocat' Nettlehamsted & Wikemans, continent' per æstimationem quindecim acras, jacent' & existen' in Wymondham præd' in comitatu prædicto, tune vel nuper in tenura five occupatione Johannis Coleman, ac nuper Monasterio de Wymondham quondam spectan' & pertinen', ac parcella possessionum inde tunc exflen', quarum quidem literarum patent' tenor fequiturin hac verba: Rex. & Regina omnibus ad quos, &c. falutem. Sciasis quod nos in confideratione boni, veri, & fidelis fervicii per dilectum & fidelem servientem noftrum Georgium Howard militem antehac nobis impenfi, ac pro diversie aliis causis & confiderationibus nos specialiter moventibus, de gratia no-Ara specialii ac ex certa scientia & mero motu nostris dedimus & concessimus, ac per præsentes damus & concedimus pro nobis, haredibus, & fuccessoribus nostrum prasata reginz prefato Georgio Howard omnes illas duas acras terræ nostras, jacentes & existentes in Ashwyven in comitatu nostro Norfokia, &c. Damus etiam & concedimus per prasentes præfato Georgio Howard militi duas pecias terræ nofires vocat' Nettlehamsted & Wykemans, continentes per estimationem quindecim acras, jacentes & existentes in Wymondham prædicta, in comitatu prædicto, modo vel nuper in tenura, five occupatione Johan Coleman, ac nuper Mo-

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PART X. Arthur Legat's Cafe.

mferio de Wymondham quondam fpectantes & pertinentes, sc parcellam poffessionum inde existen',&c. Damus etiam, & pro confideratione prædicta, per præsentes pro nobis, hæredibus & succefforibus nostrum præfatæ Reginæ, concedimus przfato Georgio Howard militi omnes & omnimodos hoscos & subboscos & arbores nostros quoscunque, de, in, & super præmissis crescentes & existentes, ac totam terram, fundum, & folum corundem boscorum, subboscorum, & arborum, & reversionem & reversiones quascunque omnium & fingulorum præmissorum superius expressorum & specisi-catorum, & cujuslibet inde parcel', necnon reddit' annual'. proficus quecunque refervat super quibuscunque dimiss. & oncess. de præmissis seu de aliqua inde parcel' quoquo modo fill, adeo plene & integre, ac in tam amplis modo & forme prout aliqui Abbates, Priores dict' nuper Abbat' & Priorat' corum alicujus, aut aliqui Gardiani, aut aliqui Cappellani cel Cantarise vel Incumbentes, aut aliquis Cappellanus Cantarisa vel Incumbens Cantariarum, Gildarum, Lampaed's Obir', & Luminar' præd', aut aliquis alius five aliqui alii præniffa, aut aliquam inde parcellam antehac habentes, postientes unquam habuerunt, tenuerunt, vel gavisi fuerunt, hasit, tenuit, vel gavifus fuit, seu habere, tenere, uti, vel gauere debuerunt, aut debuit, adeo plene, libere, & integre, ac stam amplis modo & forma, prout ea omnia & fingula præ-sifa ad manus nostras, seu ad manus præcharissimi patris nonum przefat' Reginz, Henrici octavi nuper Regis Angliz, elad manus præcharissimi fratris nostrum præfat Reginæ, dwardi fexti, nuper Regis Angliæ, ratione vel prætextu fenl' diffolution' dicti nuper Monaster', Priorat', Cantariar', ild', Lampaed', Obit', & Luminar' præd', aut ratione alijus actus Parliamenti, feu aliquorum actuum Parliamenti, quocunq; alio legali modo, jure, seu titulo devenire de-tunt, ac in manus nostras jam de jure, ratione dissolution forum nuper Monasterii, Prioratus, Cantar, Gild, Lamed Obit', & Luminar' existere debent vel deberent. Que d'omnia & fingula præmissa cum pertinentils, a nobis, ac a te, & fratre nost' præfat. Reginæ concelat' & detent' fuer teddit' & revention' inde nec alicujus inde parcell' nobis antehac

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antehac responsa fuerunt; Et que quidem omnis & fingula præmissa cum pertinentiis modo in toto extendentia adelarum annuum valorem viginti & duarum librarum, octo folidorum, & sex denariorum, & non ultra, videlicet, &c. præd' terr', tenement', prat', pastur', & cætera præmissa in Posse. wicke, Keningham, Massingham, magna Berlingham, Gift, Girston, Holme, Hunstontton, Alderford, Duckleborowe, Boyton in parochia Sancti Georgii in Civitate comitatus Norwici, Buckenham, nova Wymondham, Plumsted, Tv. lenham, Southelingham, Dinham, & Estlyham prædictis in dicto comitatu Norffolk. ad clarum annuum valorem quinquaginta fex folidorum & quatuor denariorum, &c. Proviso semper quod fi contingat prædictas terras & tenementa fuperius express. & specificat' aut aliquam inde parcellam tempore confectionis harum literarum nostrarum patentium esse majoris annui valoris, antiqui redditus, quam in præsentibus literis patentibus particulariter specificat', quod tunc benelicebit nobis præfatis Regi & Reginæ hæredibus & successoribus nostrum præfat' Reginæ de tempore in tempus durante termino decem annorum post datum harum literarum patentium, in omnia prædicta terras, tenementa, & cætera præmissa in quamlibet inde parcellam fic majoris annui valoris existen intrare & ea seisire, habere, & manibus & possessione nostrisre tinere, quousque nos præsati Rex & Regina hæredes & succes fores nostrum præfat' Reginæ de tantis denariorum summi bonæ & legalis monetæ Angliæ, ad quant' hujusmodi majo & annuus valor præmiss. seu alicujus inde parcell' secundum ratum perquifitionis viginti annorum fe attingent' fumu inde fatisfact' & perfolut', Habend', tenend', & gaudend' predi As mesuagia, domos, edificia, terras, tenementa, prata, pal cua, pasturas, boscos, subboscos, reddir' reversiones, & ha reditamenta nostra quecunque cum pertinentiis ac ceteraom nia & fingula præmissa cum eorum pertinent universis præt to Georg' Howard militi haredibus & affignatis suis ad pro prium opus & ulum ipfius Georgii ac hæred' & affignat' lu rum imperpetuum, tenend prædict' meluagia terr' ten ta &c tera omnia & fingula præmissa cum eorum pertin de nobis hæred' & fuccessoribus nostrum præfet' Reginæ ut de manet

PART X. Arthur Legat's Cafe.

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postro de East Greenwich incomitatu nostro Kanc' per fidelite tem tant' in libero locagio & non in capite pro omnib' reddit' ferviciis & demaund' quibuscunque proinde nobis hæredibus & fuccessoribus nostrum præfat Reginæ proinde quoque modo reddend' solvend' vel faciend'; Et ulterius de ampliori gratia nostra speciali dedimus & concessimus & per præsentes pro nobis hæredibus & successoribus nostrum præfatæ Reginæ damus & concedimus præfat' Georgio Howard militi omnia extunc redd' reversiones & proficua omnium & fingulorum præmissorum cum eorum pertinen' a fest'. Annunciationis beat' Mariæ virginis ultim' præterit' hucusq; provenien' five crescen' habend' eadem ex dono nostro absq; comp' seu aliquo al' proinde nobis hæred' & successoribus nostrum præfat' Reg' quoquo modo reddend' folvend' vel faciend'. Volumus etiam & per præsent' conced' præsato Georgio Howard quod habeat & habebit has literas nostras paten' debit' modo fact' & figillat' abiq; fine seu feod' magno vel parvo nobis in Hanaperio nostro seu alibi ad usum nostrum proinde quoquo modo reddend' solvend' vel faciend' eo quod expressa mentio, &c. In cujus rei, &c. T. R. & R. apud Westmonaster' ix. die Julii annis quarto & fexto Philippi & Mariæ; Et ulterius Jur' præd' dicunt super sacrament' suum qd' prædicto tempore confectie onis prædictarum literarum patentium fic ut prefertur præfat Georgio Howard manerium prædictum a prædictis nuper rege & regina non concelat' nec' detent' fuit, sed reddit' & reversiones inde dicto domino regi & dominæ reg' tunc respons. fuerunt, ac maner' illud adtunc fuit in onere & comp' de recordo, ac reddit' & reversiones inde p'f. nup' regi & regine Ph. & Mar. respons. fuerunt sed utrum terr' & ten' in narr' infrascript' mentionat' per easd' literas paten' præf. Geo' Howard militi transiverunt necne Jur' prædict' penitus ignorant, & inde petunt advisament' & consideration cur' in præmissis & fi super totam materiam prædict' per Jur' prædictos in forma predicta compert' videbitur Justic' & Cur' quod prædict' terr' & tenementa in narratione infrascript' mentionat' per prædicas literas patentes dominor' Ph. & Mariæ nup' regis & reginæ Angl' præfat' Georgio Howard transiverunt, tunc Jur' prædici' dic' qd' prædictus Edwardus Cockle non est culpabilis

Arthur Legat's Cafe. de declione infraspec prout ipse interius placitan-vit & fi siper totam materiam per sur' pradictos radict compert videbitur sustice & Cur', quod nement in narratione infrascript mentionat per material dominorum Ph. & Mar. nuper regis clin peater Georgio Howard non transiverunt, odies grafar Congo Harmy pilm comis

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In Communo Banco.

Arthur Legat's Case, in Subversion of pestilent Patents of thievish Concealers.

ARthur Legat Gent. brought an Ejectione firmæ against A Edward Cockle, on a Demise made of six Acres of Wood in Wimondham in the County of Norfolk by John Smith 19 Octob. Anno 8 Jac. for three Years, and that the Desendant ejected him, &c. The Desendant pleaded Not guilty, and a special Verdict was found to this Effect. The King and Queen, Philip and Mary, were seised of the Manor of Wimondham in the County of Norfolk in Fee in the Right of their Crown of England (whereof the said six Acres of Wood in which, &c. were Parcel) and 9 Julii Anno 4 & 5 of the said King and Queen by their Letters Patents under the Great Seal of England, in Confideration of Service done by Sir George Howard Knight a certa scientia, mero motu, & gratia speciali, gave and spanted to the said Sir George Howard (inter alia) omnes illus duas pecias terræ nostras vocat Nettlehamsted & Wikemans, continen per æstimation i 5 Acras, jac & exiller in Wimondham in Com' Norf. modo vel nuper in temura sive occupatione Jo. Colman ac nuper Monasti he Wimondham quond speci & pertinen &c. qua quidem omnia

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omnia & singula pramissa cum pertinentiis a nobis ac a patre & fratre nostris præfata Regina concelata & detent' fuer'. ac redditus & reventiones inde nec alicujus inde parcelle antehac responsa suer', Habend' præd' Georgio Howard milit' bæred & assignatis suis, &c. And that the said six Acres of Wood whereof, &c. were Parcel of the faid Land called Nettlehamsted and Wikemans; and that the said Manor of Wimondham whereof, &c. at the Time of the Making of the faid Letters Patent non concelat' nec detent' fuit, sed fuit in onere & compoto, and the Rents and Profits thereof (faving of the faid Lands called Nettlebamsted and Wikemans) were answered to the K. before and at the Time of the said Let. Patent: And if the faid Lands called Nettlebamsted and Wikemans, being Parcel of the faid Manor, pass'd or not, was the Question: And if the faid Lands did not pass by the faid Let. Patent, then they found for the Pl', &c. and if, &c. And in this Case three Questions were moved. 1. If the faid two Parcels of the Manor called N. and W. should, as this Case is, be said in Law to be concealed or detained from the K. when the Manor it self whereof, &c. is in Charge to the K. and Q. altho' in Truth the faid two Parcels called N. and W. were occupied by an Intruder, who answered nothing for them. The second Question was forasmuch as the said Grant was of the said two Parcels by the special Names of N. and W. in Wimondham in the County of Norfolk, and has these Certainties, sc. modo vel nuper in tenura sive occupatione Johannis Colman, ac nuper Monasterio de Wimondam quondam spectant', &c. all which were true) if the faid two Parcels should pass, notwithstanding they should not be faid in Law to be concealed or detained. 3. If the faid Grant by Let. Patent ex certa scientia, mero motu, & gratia speciali, should make the Grant good, notwithstanding the Falsity of the said Clause, 2116 guidem, &c.

And as to the First, it was resolved, that where the K and Q. were answered of the ancient Rent of the Manor, altho' the Permors, or Officers and Ministers of the K. suffer any to intrude into any Parcel of the Manor, yet that shall not be said in Law to be concealed or detained; for the Manor is in Charge, and by Consequence in Law every Part of it, & turp is est pars que non convenit cum suo toto.

As to the second, it was objected, that there was multiplicity of Certainty in the Clause of the Grant it self. 1. In the Thing granted, sc. by certain Names. 2. By certain Content, sc. sisteen Acres. 3. In a certain Town. 4. In a certain County. 5. In the Occupation of a certain Person. 6. In Title, Nup. Monast. de Wimondham spectan; and all these true: And therefore altho' in truth the said Lands called N.

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and W. were not concealed, yet they should pass, for (a) utile per inutile non vitiatur: And for that they cited (a) 3 Co. 10. 2. the Book in (b) 29 E. 3. 9. where K. E. 3. granted to Will. Co. Lit. 3. a. B. of Salisbury the Son omnes advocationes Ecclesiarum que 2 Sid. 63, 70. pertinent ad prioratum de Montague, &c. & quas nuper con- 2Rol. Rep. 422. cessimus Will' tunc comiti Sarum patri præd' Willielm. And Cart. 154, 155. in truth, the Advowson of the Church of W. then in Que- Hob. 171 flion, was not granted to the Father, and yet there the (6)29E.3.8.2.b. Grant is held good: And if it was in the Case of a common Postea 113. b. Person, the false que quidem, &c. would not avoid the Grant. But it was answered and resolved per tot curiam, that the Grant was void for four Reasons. 1. Because the Clause of (c) que quidem, &c. was in Judgm. of Law the Suggestion (c) 6 Co. 55. b. of the Patentee. 2. That it was a Clause of Restraint, to restrain the Grant to the Thing only concealed from the K. and Q. &c. and not in Charge. 3. To the End the final Intention of the K. and Q. by these Let. Patent, was to reward the Service of the Patentee, and not to diminish any Part of their Revenue. 4. Forasmuch as the Words are in the Conjunctive concelata & detenta fuer', &c. in which Case if the Land may be said to be detained from the K. or not. As to the first, sc. That the faid Clause que quidem, &c. should be taken in Law as the Suggestion of the Party, in 10 E.-3. Grant 58. (d) The K. by his Let. Pa- (d) 2 Rol. Rep: tent gave Licence to appropriate the Advowson of D. to 275, 278, 360. the Prior of C. quæ quidem advocatio non tenetur de nobis, Lane 109, 110. &c. and in Truth the Advowson was held mediately of the Godb. 423. K, and the Licence was held void, for the Book faith that the Suggestion was false. And in 31 E. 4. 48. a. If (c) the (e) 1 Co. 52. 4. K. grants the Manor of D. &c. quod quidem manerium ad Lane 12. manus nostras devenit ratione escheat', &c. and in truth the Dy. 87.pl. 100, Manor did not come to the K. by escheat, the Grant is void; and the Reason that Hussey Ch. Just. there gives is, because the Falsity comes on the Surmise of the Party. And therewith agree 8 H. 7. 3. b. (f) 37 H. 8. Br. Patents, (g) (f) 37 H. 8. and 9 H. 6. 28. a. b. And in 16 E. 4. 7. a. it is held, That (g) 2 Rol. Rep. the Patentee shall not take Advantage of any other Title, 274,278. than that which is expressed in the Let. Patent. And in Moor 318. the Act of Confirmation of Let. Patent, an. 18 El. c. 2. there is a Proviso: Provided always, that this Act, &c. Shall not extend to any Let. Patent, which at any Time since the Besinning of her Majesty's Reign have been, or hereafter shall be granted by the Q.'s Highness to any Person or Persons, g any Manors, Lands, &c. by Force of any Information, Suit or Suggestion made or to be made to her Highness, that the same Manors, Lands, &c. were concealed Lands. always after this Act, and after the like Act of Con-Armation of Let. Patents, an. 43 El. cap. 19. the faid Clauses of que quidem, &c. and ordinary Proviso's concerning Concealments, were construed and taken in Law for Informations,

2 Rol. Rep. 360.

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Hard. 231, 232. 2 Rol. Rep. 275. 6 Cs. 55. b. Godb. 423.

Suggestions and Suits of the Patentee to the Q. for concealed Lands. As to the Second, the faid Claufe of Que guidem, &c. contains Words of Restraint inserted for the K.'s Benefit, for it implies a Suggestion to the K. (as has been said) and an Answer made to it by the K. sc. The Suggestion of the Patentee to the King is, That he has found Lands which are concealed from him, of which he has not any Rent, Profit, or other Benefit answered; and therefore may it please the K. in Reward of his Service, &c. to grant those Lands to him, which he by his Induitry has found to belong to the King. To which the King answers, I am content to grant you the said Lands, so as according to your Suggestion they are concealed from us, and whereof we have not any Rent or Profit answered: Upon which the faid Clause of Que quidem, &c. was added in the Patent, to restrain the K.'s Grant to Lands only which were concealed from him, and to no other, whereof the K. was answered any Rent or Profit. Quod restringen-di causa additur in casu domini regis, si falsum sit vitiat cartam. And therefore a notable Cause was cited, which was adjudged Mich. 22 & 23 Eliz. Regine in the King's Bench, but it was entered Pasch. 21 El. Rot. 33. where the Case was, that Francis Vowe brought an Ejectione firma against Richard Smith, on a Demise made by Leonard Vowe 3 Oct. an. 20 El. Reg. of a Meffuage, &c. in Hallangton in the County of Leicester; the Def. pleaded Not guilty; and at Nisi prius before Sir James Dyer then Chief Justice C, B. &c. a special Verdict was found to this Effect. William Dexter was feised of the Manor of Hallangton in the faid County of Leicester in Fee, whereof the faid Meffuage, &c. was Parcel, and in the Time of R. 2. did thereof enfeoff Henry Earl of Derby and his Heirs; and afterwards the faid Earl took upon him the Crown and Government of this Realm, by the Name of Henry the Fourth. And afterwards 2 Aprilis ann regnt Jui 7. ad bumilem petitionem & supplicationem quorundam Johannis Miton & Margarete uxoris ejus consanguinea & bæredis dieti Willichmi Dexter, videlicet, filia Willielmi, filii prædicti Willielmi Dexter, de gratia sua speciali per literas suas patentes sigillo Ducatus sui Lancastria confect' gerentes dat' eifd' die & ann', dedit & concessit prefai Joh. Miton, & Margar' uxori sua maner' prad' unde, &c. Habend' eis & hered' de corpore ejusa' Margaret' legitim procreat', &c. the said J. Miton and Margaret his Wife had Issue, and died; and afterwards one Tho. Vowe, Cozen and Heir of the Body an. 1 Reg. Mar. of the faid Tenements in which, &c. enfeoffed the faid Rich. Smith now Def. and of the Residue of the Manor enfeoffed the faid Leonard Vowe the Pl.'s Leffor: And the Jury found further

Vow's Cafe in Mich.22 & 23 El. in B. R. Moor 417. 2 Anderf. 19. Raym. 177.

in these Words, Idemque Leonardus Vowe frater pradicti The Fowe postea, sc. primo die Julii anno regni dicte domine regine nunc 17 in vita dicti Tho. Vowe senioris fratris fui, dans eidem di a regine intelligi & informari hipfum fore proprium exitum & haredem de corpore prafat Margarete Myton legitime procreat, eidem domine regine bumillime supplicavit, ut cadem domina regina nuno per literas suas patentes sub magno sigillo suo Auglie sigilland' renovare & confirmare velit eidem Leonardo & bared' suis de corpore suo legitime procreat' prædict' cartam factam per præfatum quondam H. 4. gerent' datum, Sc. Per quod domina regina nunc humili petitioni dict' Leonardi annuens, & informationi sue fidem adhibens. primo die Julii anno 17 Volentes dictam intentionem pradicti regis H. 4. effectum capere & non evacuari, de gratia sua speciali & ex certa scientia & mero motu, certis causis & considerationibus ipsam dominam reginam specialiter moventibus, per literas suas patentes geren' dat' eisdem die & anno dedit & concessit prædicto Leonardo Vorce existen' (ut datum fuit eidem domine regine intelligi) proxim' heredi & exitui de corpore predicte Margarete Myton legitime procreat, manerium prædictum unde, &c. Habendum & tenendum prædicto Leonardo & bæredibus de corpore suo legitime procreat, ubi revera prædictus Leonardus non fuit proximus hæres de corpore predicte Margarete Myton, sed predictus Thomas Vowe fuit in plena vita & frater fenior ejustem Leonardi. And afterwards Thomas Vowe died without Issue; after whose Death the said Leonard then was in truth the next Heir of the Body of the faid Margaret Myton. The Queen reciting the faid Misprision, and all the faid special Matter under her Privy Seal, bearing Date 9 Julii anno regni sui 20. (to be a Warrant to the Great Seal) granted to the said Leonard Vowe the said Manor whereof, &c. in Tail; but before he had obtained it under the Great Seal, the faid Queen 2 Sept. anno regni sui 20 supradicto, by her Letters Patent under the Great Seal granted to the faid John Farnbam Elq; one of her Pensioners the said Messuage, &c. In 910, &c. inter alia per nomen totius illius messuagii voc' Vowes, alias Mytons, alias Dexters, in Hallanston in comilat Leic', que quidem omnia & singula præmissa & queibet inde parcella a nobis aut a patre, fratre vel sorore no-Iris hucusq; vel usq; 8 diem Oct. an. regni n'ri 17 concelata, suffracta, vel injuste detent' fuer', &c. To have and to hold to the said J. Farnham and his Heirs for ever. Prooyo semper, quod si præmissa non sunt aut non fuer' nobis aut a dictis patre, fratre, vel sorore nostris concelata, substracta, vel injuste detent, & sic remanser usque

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usque tempus captionis prima inquisitionis vel informationis, Ec. quod tunc he litere patentes quoad, Ec. vacua erunt. And the first Certificate was Octabis Trinit' anno regni dict' dom' regina El. 20. And afterwards, sc. The first Day of Oct. then next following, The said Leonard Vowe obtained Let. Patent under the Great Seal, according to the said Privy Seal, and the first Day of Octob. in the

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twentieth Year aforesaid, the said John Farneham by Deed indented and inrolled, bargained and fold to the faid Richard Smith now Def. the faid Meffuage, &c. in quo, &c. To have and to hold to him and his Heirs, by Force of which he entered, &c. upon whom the faid Lecnard Vorce entered and made the Lease prout, &c. And if upon the whole Matter aforefaid, the faid Let. Patent made to the faid John Farnham, were sufficient in Law to pass the said Messuage, &c. then they found for the Def'; and if not, then for the Pl', and affeffed Damages and Costs. And in that Case upon Argument made at Bar and Bench, four Points were resolved. 1. That the faid Let. Patent de an. 17 reg. El. were void in Law, because they were in the Nature of a Restitution, and the Suggestion of the said Leonard Vowe recited in the said Let. Patent, that he was next Heir of the Body of the faid Margaret Myton was falle; and altho' it was but Matter in Fact, yet because it was the principal Motive of the said Grant in the Nature of a Restitution, and the Intention of the Q, expressed in the Let. Patent, was that the Intention of the Grant of the faid K. H. 4. should take Effect, which the Q. reciting the Let. Patent of K. H.4. and the Imperfection of them declares her Intention in these Words; volentes dictam intentionem pred' regis Henrici 4. effectum capere & non evacuari, which could not be if the right Heir of the Body of the faid Margara Myton be not restored; for this Cause the said Grant of Q. El. de an. 17 was void. 2. It was resolved, That the faid Clause of Que quidem, &c. was in Judgment of Law the Suggestion of the Patentee, and added to restrain the faid Grant in such Manner, that if the said Clause of que quidem be falfe, altho' the faid Meffuage be granted by

certain Name, yet the Grant is void. 3. It was resolved

That when the K.'s Officers by Force of any Matter of

Record, may have fo certain Notice of the Lands or To

nements comprised therein, that they may put them

Charge to the King, altho the Record it felf be not

any Effect or Validity in Law; yet in Judgment

Law, fuch Lands or Tenements shall never be faid to b

Officers or Ministers shall not turn to the K.'s Prejudice

5 Co. 94. 24 Hob. 230.

Hob. 228.

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fuch Cale: And therefore any Grant or Demise of the K. of any Land in certainty under the Exchequer-Seal, where it ought to be under the Great Seal, or under the Great Seal where it ought to be under the Dutchy Seal, or under the Seal of the Dutchy, or of the Court of Augmentations, where it ought to be under the Great Seal: Yet fuch Land can't against such Record be said to be concealed; and therefore altho' the faid Grant of K. H. 4. under the Dutchy Seal, where it ought to have been under the Great Seal, altho' nothing passed by it: Yet by Reason thereof the said Manor of Hallington can never after be said to be concealed. So if K. E. 3. had by his Let. Patent under the Great Seal demised the Manor of D. for Life, or for Years, which Lease was void by Reason of the Misnomer of the Leffee, or any other fuch like Imperfection, yet the faid Manor never after can be faid to be concealed, and if any Parcel of the Possessions of the Crown be in Charge in the Dutchy, or of the Dutchy in the Exchequer, these shall never be said to be concealed. And it was said that this Word Conceal was a Word of new Invention, in Times past not used or known to the Sages of the Law, but in one Writ which (a) Stamford Prerog. 80. b. speaks of, which Writ (a) Stamf is there called, a Writ de terris concelatis, and lies after a Prærog. 80. b. general Livery fued; but fuch Writ is now also concealed, for it it not found in the Register, Original or Judicial. 4. That no Land or Tenement whereof the K. is feifed, &c. altho' it be concealed from the K. can be faid in Law to be substracted or detained from the K'; for the K. can't be diffeised or deforced of any Land, &c. But if the K.'s Tenant is (b) diffeised, and dies without Heir, then the Right (b) 3 Co. 4: b. escheats to the K', and there in truth the Land is detained ! from the K'; but such Right shall not pass by the K.'s 187. b. general Grant of the Land. Hill. 38 El. it was resolved by Poph. and Anders. Ch. Justices in the Case of one (c) Shane (c) Hill. 38 El. sent out of Ireland, That the Clause of que quidem, &c. Shane's Case. Moor 417. in the like Let. Patent of Concealment of Lands in Iraland, amounted to a Suggestion, and being false, made the Grant of divers Rectories by certain Name void, as here in the fourth Point will appear. As to the third Reason, to the End that the final Intention of the K. by these Let. Patent was to reward the Service of the Patentee, and not to diminish any Part of the Revenue of his Crown, but only to pals that which was concealed from him: And the Opinion of June in 9 H. 6. 28. b. was cited, (d) It a Man sues to (d) 2 Rel. 188 the King by Petition, to have a Manor, and faith in his Petition, that the Manor is worth but 10 l. and hath a Patent of the same Manor, and afterwards it is found upon Record, that the Manor was worth 40 l. per annum,

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51. a. 52. b. 2 Co. 33. b. Co. 94. 2. 7 Co. 12. b. 8 Co. 56. Lane 110 1 Aff. 19. Yelv. 48. 2 Rol. 188. Dyer 339. Moor 417. 2 And, 19. Raym. 177.

(d) Go. Lit. 225. 4.

(f) Plowd. 330. b. 1 0.51.b.53.b. \$ Leon, 249.

the Patent shall be repealed, for the K. intended to diminish his Revenue but 101. per ann. and upon the Sugge-(a) 1 Co. 46. a. stion of the Patentee he was (a) deceived in the Value, and thereby he decreased his Revenue 40 L per ann. Vide 16 E. 3. Grant. 54. As to the fourth Reason, the said 6 Co.29.b.55.b. Clause of Que quidem has a double Conjunctive, sc. concelata & injuste detenta; and as it appears by the fourth 11 Co 4.h.90.a. Point of (b) Vowe's Case, Land, &c. can't be detained from the King; and fo it was resolved in (c) the said Morr 45, 164. Case of Shane, Hill. 38 reg. El. where the Care was, 9 H. 6. 28. b, El. by her Let. Patent under the Great Seal of Ireland, Hob. 223, 229. El. by her Let. Patent under the Great Seal of Ireland, Hob. 223, 229. El. by her Let. Patent under the Great Seal of Ireland, Hob. 223, 229. Cro. Car. 198. ex certa scientia, mero motu, & gratia speciali, granted to Co Ent. 384. a. Edm. Barret the Rectory of Sroze in the County of Long-Br. Patent 38. ford in Ireland, (inter alia) Parcel of the Possessinos of Mod.Rer, 196. the late Priory of Loughsendy, Que omnia & fingula pra-Keilw. 8.b. 12, b. missa a nobis & progenitoribus nostris diu antebac, concelata, substracta, & injuste detenta fuerunt & adbuc sunt, To have and to hold to the faid Edm. Barret and his Heirs, pl.47,352.pl.26. And it was resolved, that that was Grant void, because the Plowd 332. a. s. said Clause of qua quidem was in Judgment of Law the Suggestion of the Patentee, and the faid Rectory could not be unjustly detained from the Queen; and the Words are in (c) Antes 112. the Conjunctive, J. concelata, fubstracta, & injuste detenta, and so Francis Shane who occupied the faid Rectory did prevail against the said Patentee: And the second Conjunctive is, Et redditus & reversiones inde, nec alicujus inde parcell' antehac respons' fuer', so that both the (d) Conjunctives ought to be true, or otherwise the Grant is void. As to the third Point in the principal Cafe it was refol-

(e) 3 Inst. 389 ved, where the said Grant made to Sir George (e) Howard was ex certa scientia, mero motu, & gratia speciali: Ex certa scientia (f) imports that the K. had knowledge of the Thing he granted, and therefore fuch Grant is called affertive and not suggestive, as it is said in 2 E. 3. 7. in John de Bretaine's Case, but that is to be intended of the Truth, which is the proper Object of Knowledge, and not of Falfity which is non ens, and of that the King can't have knowledge, but in fuch Cafe the K. notwithstanding those Words, is utterly deceived in his Grant; and therefore

they shall not give the Patentee any Advantage.

Ex mero motu properly imports the Honour and Bounty of the King, who rewards the Patentee for the Merit of his Service of his own mere Motion, without any Suit of the Party: And it was faid that those Words were ad-(g) Rast. Pat. 6. ded after the Statute of (g) 4 H. 4. cap. 4. by which Act the King declares, that he will abstain from granting any

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Part of his Revenues, Lands or Wardships, unless to those who have deferved, and those who fue for any such Thing shall be punished and shall not have the Thing for which the Suit was made : After which Act, to the End it might not appear that any Suit was made, these Words were added, sc. ex mero moru: And the faid Act is entiruled in the Roll Brangwyn, which in the British Tongue signifies White Brangwyn. Crow: And he was called a Crow because he was often-times calling and acquiring: And White because he had sulica & candida vestimenta. Ex gratia sua speciali, in respect of the Grace and Favour, which the King had conceived for the Patentee. And it was resolved that there was a Difference between Clauses of (a) que quidem, &c. (a) Cr. Jac. For some are added only to make a more plain Demonstra- 34, 35. tion of the Certainty of the Thing granted, and some which Lane 13. concern the King's Title, or the Value of the Land grant- Plowd. 191. b. ed, or to make a Restraint of the King's Grant as has been Yelv. 48. faid before: And Additions only to make more Certainty shall not avoid the King's (b) Grant of a Thing certain; as (b) Savil 48. (c) 10 H. 4. 2. b. in Sir John Lestrange's Case, it is held. Moor 45. That if the King by Office found has a Manor in Ward, and Dy. 87. pl. 101. grants the faid Manor by a certain Name in fuch a County, (c) 3 Keb. 413. grants the land manerium nuper seisitum fuit in manus no- 414.

grants the manerium nuper seisitum fuit in manus no- 414.

fras, &c. and in Truth this Manor never was seised, it Godb. 423.

I Mod Rep. 197. shall not avoid the Grant, for it is not (d) material whether 2 Co. 33. a. the King had feised it or not; and it was added but to (d) Cr. Jac. 34 make more Certainty to that which was certain enough before; and therefore it shall not avoid the Grant altho' it be false. Otherwise it is of a general Grant, as in the principal Cafe there it was.

So in Mich. 22 & 23 Eliz. A Case between the Earl of Ruland and Thomas (e) Markham was by the Command (e) Mich. 22 &c of Queen Elizabeth referred to Bromley Chancellor of Eng- 23 Eliz.
Tho. Markland, Gerard Attorney, and Popham Sollicitor; and the ham's Cafe. Case was fuch: The Queen granted to Thomas Markham 1 Mod Rep. 197. Officium custodis parcorum sive boscorum de Billow & Berkand in foresta de Sherewood in com' Nott' quod quidem of-scium Henric' nuter Comes Rutland' nuter habuit, to have and to hold the faid Office to the faid Tho. Markham for (f) Dyer 87. Term of his Life; and in Truth the faid Henry E. of Rut- pl. 101 and never had the said Office; and yet it was resolv'd by 'em (g) 2 Co. 33. a. that the Grant was good, because quod demonstrandi causa 3 Co. 10. a. 1) additur rei satis demonstratæ frustra fit. So if the Plowd. 191. b. King demises a Manor by special name, (g) quod quidem Dy. 87. pl. 101.

manerium nuper fuit in tenura sive occupatione Johan Stile: Cr. Jac. 34.

Moor 45. and in Truth he never had it, yet the Grant is good, Yelv 48.

for Cr. Car. 548.

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(a) Co.Jac.34.

the Value which he intends to (a) grant, nor in the Restraint

which he for his Profit intends to make. It was likewise re-(b) 11Co.87.2. folved, That there was a (b) Difference betwixt the King's Case, and the Case of a Subject, for a Subject who may mind his own private Affairs, shall not avoid his grant in these or the like Cases, being made upon a false Infinuation or Suggestion; but the King who takes Care of the Commonwealth, shall avoid his grant in these Cases jure regio, as it is

74. b. 1 Co. 44. 2. Hob. 155. Cr. Car. 548.

(c) 11 Co. 87.2. faid in (c) 21 E. 3. 47. a. b. in the Earl of Kent's Case, and it is an high and great Prerogative which the King has, that when he makes any grant upon such false Suggestions as aforefaid, they are void in Law; so when upon false Infinuations or Pretences, he makes any grant as of any Monopoly, &c. which in Truth is to the Prejudice of the King and the Commonwealth, the King jure regio shall avoid such Grants, and fuch Letters Patent by Judgment of Law shall be cancelled. And it was faid that Perpetuities, Monopolies, and Patents of Concealments were born under an unfor-

(d) Ant. 42. b. tunate (d) Constellation; for as foon as they have been brought in Question, Judgment has always been given against them, and none at any Time given for them; and all of them have two inseparable Qualities, sc. to be troublesome

and fruitless.

As to the said Case in (e) 29 E. 3. 8. the Case there is, (e) Ant. 110. 2. That the King being Founder of the Priory of Mountague (which was a Priory alien) by reason of the War of France feifed the faid Priory, and by his Charter granted to Will. Mountague Earl of Salisbury the Father, the Advowson of the faid Priory to him and his Heirs, and also the keeping of the faid Priory during the War, with all the Appurtenances, and all the Profits thereunto belonging, as entirely as it was in his Hands. And after the faid Earl died, William his Son and Heir then within Age; to whom the King by another Charter granted omnes advocationes Ecclesiarum que pertinent ad prioratum de Mountague, tenendum usq; ad legitimam etatem prefati Willielmi, & quas nuper concessimus prafato Comiti Sarum Patri; where it is taken, That the Advowsons appertaining to the said Priory did not pass to the Father by the said general Words. And there Green Chief Justice said, Surely he conceived, That altho the K. had never granted the Advowsons to the E. the Father, That by the second Charter they should pass to Wm. the Son by those Words; for in as much as he grants, &c. 10 hold till his full Age, altho' that which he fays after (the which

(f) Palm. 83. he granted to his Father) be false, (f) the Grant 18

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good, but Norton contrary; fo that Green's reason was, because the faid Words of Restriction came after the Habendum, sc. after a full and absolute Grant; also if the said Opinion of Green should be Law, the said Case is out of the Reason and Rule of the Case at Bar, as appears before. And Mic. 10 Fac. Reg. Judgm. was given for the Plaintiff; whereupon the Def. brought a Writ of Error, and the Error affign'd was in the Point adjudged, which Point was argued again at the Bar, and at the Bench, and in Mich. 11 Regis Jacobi the Judgment was affirmed per totam Curiam, for the Causes and Reasons reported before. Nota Reader, That Hill. 36 Regine El. an Information was exhibited in the King's Bench against Hugh (a) Vaughan for intruding into (a) Hill. 36. El. the Scite of the late Priory of Friers Preachers in Langley Hu. Vaughan's Regis, in the County of Hereford, and upon Not guilty Case in B. R. Gr. El 507, pleaded the Jury gave a special Verdict to this Effect. Richard Prior of the faid late Priory ann. 38 H. 8. with the Moor 537, 538. Consent of the Covent by their Deed enrolled did furrender and grant to H. 8. his Heirs and Successors all their Possessions, &c. by Posce whereof, and of the Act of 31 H. 8. The K. was seised of the said Scite, and 7 Feb. ann. 31 H. 8. demised it by the Name of the Scite of the said late Priory to the Suffragan of Dover for his Life absque aliquo inde reddendo, and afterwards the said Suffragan died; and the Scite by mean Descents descended to Q. Elizabeth. And afterwards 27 Junii ann. 8 Eliz. a Commission was directed under the Exchequer Seal to Will. Cook Efq; and others giving them Authority to survey the said Scite (inter alia) and to certifie to the Exchequer in what Reparation it was, and what Lead, Stone and Iron was requifite to repair it; which Commissioners 3 die Septemb. following by Force of the faid Commission, did certifie in Writing under their Seals (inter alia) That there was an old Church appertaining to the faid late Priory, which was in great ruin and decay, and was covered with Lead, which Lead was worth 331.65.8 d. And the Timber and Stones were little worth, &c. After which Certificate the Lead, Timber and Stones were fold by the Treasurer and Under-Treasurer of the Exchequer ann. 9. El. to one Webster for 33 l. 6 s. 8 d. who in the Court of Exchequer acknowledged the Debt. And afterwards the faid Queen El. 9 Aprilis anno regui sui 16. by her Letters Patent, ex certa scientia, mero motu, & gratia nostra speciali, granted the said Scite of the said late Priory inter alia to Edward Grimston the Father, and Edward his Son and their Heirs under this Proviso, semper quod I predicta premissa aut aliqua inde parcella, aut redditus aut proficua eorundem non sunt nec fuerunt ante 10 diem Aprilis anno regni nostri 14. a nobis nec a patre, fratre, nec sorore nostris concelat subtracta,

detent remanserunt usque pred 10 diem Apr' anno 14 fupradicto, quo die prad Edwardus & Edwardus, &c. fuis pro-

priis sumptibus & expensis ad revelationem inde fieri procuraverant, qd' tunc be Litere patentes quoad bujusmodi par-

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(a) 11 Co. 90. 2. 92. b. 93. 2. Cro.El. 221, 508. Br. Account 8, Br. Bayly 25. Moor 476. Jenk. Cent. 226. c. 89. Plow. 321. 2. 440. 7 Co. 12. b. Godb. 292,293, 297, 299. 2 Rol. Rep. 296,297, 300, 302, 303, 304. Hardr. 25, 26. 7 Co. 21. b. 29. b. 8 Co. 171. 2. 12 Co. 3. 2 Inft. 19. Lane 48, 108.

1 Ventr. 132. 2 Rol. 16:, 156. Dy. 160.pl.41. 224. pl. 32, 33. 249.pl. 83.295. pi. 10.

cue erunt. And further found that the Queen never took any Profit of the faid Scite, but of the faid Church as aforefaid. And if, &c. And it was objected that the faid Scite fhould pass by the Letters Patent, because altho' it should be admitted that the Scite it felf could not be faid to be concealed in that Case, and altho' the said Scite could not be faid substracted or unjustly detained from the Queen. Yet forasmuch as the Rents and Profits thereof were substracted and unjustly detained from the Queen, and the Words are in the Disjunctive, aut redditus aut proficua eorundem, &c. therefore the faid Letters Patent were fufficient to pass the faid Scite. Also it was objected, That the said Commission under the Exchequer Seal, is not any fuch authentical Record in Judgment of Law, to prove that the faid Scite was not concealed. But it was resolved per totam Curiam, That upon the faid special Matter found, the faid Scite should not pass by the faid Letters Patent. And in that Case fix Points were resolved. 1. That when there is any Record by which the Certainty of the King's Land (which is not in Charge) fo particularly appears, That the King's Officers may put it in charge (without any respect to the Time of the faid Record, fo that it be after the King's Title accrued) fuch Land can never be faid to be concealed. As if a Man feised of the Manor of D. in Fee by Deed enrolled granted the faid Manor to King H. 8. his Heirs and Successors, and the King or any of his Successors after the said Grant had never taken any Rent or Profit thereof, yet this Manor shall never be faid to be concealed. So in the Case at Bar, when the King demised the faid Scite of the late Priory to the Suffragan of Dover for his Life, altho' nothing be referved; this Scite shall never after be faid to be concealed: Et sic de similibus. 2. It was resolved, That in the King's Case, altho' one wrongfully takes the Rents or Profits of his Lands, yet the said Rents or Profits can't be said to be withheld or unjustly detained, for the King may charge him who takes the Rents or Profits of his Lands as his Bailiff to render (a account; for in the K.'s Case the Lew in such Cale makes a Privity, and therewith agrees 33 H. 6. 2 & 3. And when the Land it felf is not concealed, the faid Words, aut redditus aut proficua eorundem, &c. conte

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celata, subtracta, vel injuste detenta, &c. will not pass it, for the King's Intention was to pass nothing but that which was concealed from him; for otherwise by Pretence of the Patentee, if the King's Leffee has detained his Rent referved upon his Leafe, it should pass by the said Words, which was absolutely denied by all the Justices, for no such confrained Construction shall be made in the King's Grant, to pass his Inheritance against the King's Intention, and the Suggestion of the Patentee himself. 3. It was resolved, as before in Shane's Case, that in the same Case Land can't be faid to be substracted or unjustly detained. 4. That the said Words ante decimum diem Aprilis anno 14 El. should in Construction of Law be taken for the whole Time after the later Title of the Queen, until that Day, and not for a Month, or a Year, or two Years, &c. upon which great Uncertainty would follow; but all Times after the King's Tithe until that Day should be taken, notwithstanding the Difjunctive Words subsequent, a nobis, aut a sorore, fratre, vel tutre nostris. 5. That the faid Commission under the Exchequer Seal, and the Return thereof was sufficient to in-And the King's Officers to put the Scite in charge, and it (4) 5 Co. 52.b. ferves for a sufficient Record to that purpose; but an Office Moor 199, &c found by Force of a Commission under the Exchequer Seal, is not fufficient to entitle the King, in case of Attainder of Co. Lit. 2. a. Felony, Mortmain, Cessavit, or the like. So Note (a) the 117. 2. Difference betwixt an Office of Instruction, and an Office 4 Co. 58. a. of intitling. Lastly, It was resolved, That for a much as Cro. El. 855. the Queen was answered some Part of the Profits of the said Cr. Car. 173. Scite, no Part thereof can be faid to be concealed.

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Robert Pilfold's Case.

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(a) Cro. Jac.

AND MARCH

RObert (a) Pilfold brought an Action of Trespass in the King's Bench, Trin. 7 Jac. Reg. Rot. 795. against Robert Dawks quare clausum & domum fregit, at St. Olaves in Southwark, in the County of Surrey, with a Continuando for a long Time, to the Damages of the Plaintiff 401. The Defendant pleaded Not guilty, &c. which Iffue was tried by Nisi prius for the Plaintiff, and Damages affessed occasione transgressionis predicte ad 491. and for Costs of Suit 20 1. upon which Verdict the Plaintiff at the Day in Bank, being (b) 11 Co.56.2. the Day of the Return of the Distringus (b) remitted 9 l. 2 Built. 279. Parcel of the said 49 l. affested for Damages, and prayed 1 Rol-Rep. 88 Judgment of 401. (to which Damage he had declared) with encrease of Costs, and had 91. de incremento added by the Court, which in all did amount to 501. and had his Judgment accordingly. And thereupon Dawks the Defendant brought a Writ of Error in the Exchequer-Chamber and in this Case it was assigned for Error, that the Damager and Costs together amounted to more than the Damage alledged in the Declaration; And it was firongly argu'd tha it was Error, for misa & custagia are included in this work (c) 8 H.6.cap.9. Damages; and therefore where the Statute of (c) 8 H.6 Cro. El 582. gives treble Damages in a Writ of Entry; in an Acti Co. Lit. 257.b. on upon the Statute, or in Affife, there the Costs al fo shall be treble; and yet the Statute gives treble Damages only, but treble Costs are included in this word Damages. And therewith agree 14 H.

enk.Cent.286. Hob. 178. F.N.B. 107. b. 1 Rol. 784.

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13. a. 19 H. 6. 32. a. 22 H. 6. 57. a. 12 E. 4. I. a. F. N. B. 13. 6. 19 H. 6. 32. 6. 22 H. 6. 5/1. 6. Domingo (a) Bi- (a) 1 Rol. 517. 248. c. And in 4 & 5 P. & M. Dy. 159. b. Domingo (a) Bi- Dy. 159. pl. 37, lots brought an Action on the Case against one Pointel, be- 38.

cause he sued him before the Admiral for a Thing done upon 4 Inst. 141.

the Land, in which Case the Stat. of 2 H. 4. c. 1. gives the Moor 892.

(6) 1 Rol. 51 the Land, in which Cale the Stat. of 2 H. 4. c. 1. gives the (6) 1 Rol. 517.
Pl. double Damages, without speaking of any Costs, and yet (c) 1 Builtr.49. there he recovered as well double Costs as double Damages. Cr. Jac. 70. And in 18 E. 4. 23. a. The (b) Jurors may affels the Dama- (d) Bulitr. 38. and In 18 E. 4. 23. a. The (b) Jurors may anels the Dama- 2 H. 6, 7. a. ges and Costs entirely if they will, for Damages include the 1 Rol. 578. Whole, (c) 42 E. 3. 7. b. that the Pl. shall not recover more Yelv. 70.

Damages than he himself has declared for; and therewith Cr. El 544.

Cr. Jac. 70. agree (d) 2 H. 7.7. 9 El. Dy. (e) 258. b. And in (f) 13 H.7.16, (e) Dy. 258. 17. in Trespass the Pl. declared to his Damages of 20 Marks, pl. 16 and the Jury gave 22 Marks for Costs and Damages: Brian, 1 Bulft. 49. this is good for 20 Marks, but they shall not give Costs be- 1 Bulter. 49. yond the Sum of the Damages in the Declaration, & alii 1 Rol. 578. concord and that was faid, was a Case in the Point, where- Cr. El. 544fore it was concluded, that the Judgment for that Reason Yelv. 70. was erroneous. But it was at last resolved by all the Judges 2 Inst. 288.
of the Com. Pleas, and Barons of the Exchequer, that the Cr. El. 568.
Judgment should be affirmed. And the Reasons and Causes Cr. Jac. 69, 70. thereof I have thought necessary to report at large. And Yelv. 70. therefore, First, at the (b) Com. Law before the Statute of (b) 2 lnst. 286. Gloucester (which was made ann. 6 E. I. C. I.) A Man Co. Lit. 285. should not recover Damages in any real Action, as in (i) a. b. Dower before the Statute of Merton, c. 1. nor in Aiel, Mor- (i) 2 Inst. 289. dancester, &c. before the said Stat. of Gloucester; but in Ac. a.b. tions mixt, as in Assige, (k) Entry in the Nature of Assige, Br. Cost. 29. So or in personal Action, as Trespass quare clausum fregit, (k) Dy. 370. of Goods taken away, &c. 2. And that in all Cases where a pl. 61. Man (1) should recover Damages, he should recover Costs, (1) 2 Inst, 2892 which is meant of all Cases, where be should recover Damages; either before the said Act of 6 E. 1. or by the faid Act. 3. In all (m) Cases where a Man (m) 2 Inst. 289, ather before, or by the same Statute should not reco- 362.

The Damages, if after the said Act another Stat. in a new March 29, 61.

Cro. Car. 360. Ale gives Damages, either fingle, or double, or treble, &c. 1 Jones 434. here the Pl. shall not recover Costs, for this Act is an Act of (x) 2 Inst. 289. Creation, which creates and gives a Recompence to the Pl. March 29, 61. here in the fame Case no Recompence was given before. (0) Cro. El. But it is otherwise of an Act of (n) Addition, sc. which 582. dds greater Recompence and Satisfaction than was given (p) 1 Jones the Common Law, but the Act encreases the Damages, 2 last. 289, here the Plaintiff shall recover his Damages encrea- Co. Lit. 17. b. And therefore in 344 b.

Quare Impedit (p) Damages are given to the Plain- 5 Co. 59 a.

If by the Statute of West. 2. made in 13 E. 1. cap. 5. 6 Co. 51 a. ut no Costs shall be there recovered, because it Kelw. 26. a. an Act of Creation, which newly gave Recompence

(a) 2 H.4.C.11. 1 Rol. 317.

(b) 2 Inft. 288. Salk. 205.

(c) 1 Jones438. Kelw. 26. a. Cro. Car, 560. 19 H. 6. 32. a. 2 Inft. 289.

(d) 8 H. 6. c.g. 1 Jones 434. Lit. fect. 431, 2 Inft. 289. F. N. B. 248.c. Co Lit.257.2.b. 12 E. 4. 1. a. 14 H. 6. 13. a. 19 H. 6. 32. a. (e) 5 & 6E.6 c. March 25.

(f) Cr. Jac. 69, 420.

(g) 2H. 4 C.11. 8 H. 6. c. 9.

agree 27 H.6. 10. b. 2 H. 4. 17. b. 9 H. 6. 66. b. But in an A& on on the Stat. of (a) 2 H. 4. against him who fues in the Adm ralty for a Thing done upon the Land, that is an Act of Addition on, for Damages and (b) Cofts were in fuch Cafe recoverable; the Com. Law. Vide for that 8 E. 4.13. b. & 14.a. and the Sta encreases the Damages to double, and yet he shall recover Cos alfo, for the Stat. in encreasing the Damages, doth not take way the Costs. So afterwards at the same Parliament at Gloud ster ann. 6. E. 1. c. 5. An Action of (c) Waste is given, who there was but a Prohibition against Ten'tin Dower, &c. att Com. Law, and no Damages should be recover'd in it, but Waste done after the Prohibit. deliver'd, and against Ten't Life, or Years, no Prohibit.lay, and therefore the Stat. 6 E. c. 5. which gives treble Damages for Waste done before t Writ brought, and the Place wasted, is a Law of Creation, a which gives Remedy where none was before, and therefore there no Costs shall be recovered: And therewith agree 2 H 17.b.9H.6.66.b. & 19H.6. 32. a. and therefore the Books in H. 5. 13. 4. & 5 E. 4. 7. a. are ill reported. But in Ravisbme of Ward, which is a Law of Addit. sc. which adds the Recove of the Ward it felf, or the Value of it : Yet Damages and Co shall be also recover'd, because an Action lay at the Com. L. forRavishm. of Ward, in which the Pl. should recover his Dan ges and Costs: And there with agrees 27 H.6. 10.b. So in an ction for forcible Entry into Landsupon the Stat. of 8 H.6. or an Affife for a Diffeifin done with Force, there the Pl. shall cover treble (d) Damages, and his Costs also, because at t Com. Law the Pl. should recover Damages and Costs in bo the Cases, for that Stat. is but an Act of Addit. and therewith gree 14 H. 6.13. a. 19 H. 6. 32. a. 22 H. 6. 57. a. 12 E. 4.1 F. N. B. 248.c. But in a Decies tantum, which is a Law of C ation, there the Pl. shall recover the Penalty given by the St and no more, for that is a Law of Creation, 2 H. 4. 17. b. So on the Stat. of 5 E. 6. of (e) Ingroffers, the Pl. shall not reco Costs, but only the Penalty given by the Stat. because the had no remedy at the Com. Law, 35 H. 8. Damages 200 Bro

Fifthly, It is to be known, that this word (f) Damna is ken in the Law in two feveral Significations, the one prope and generally, the other relative & stricte; properly, as in Cases which have been put upon the Stat. of (g) 2 H.4. & 81 where Costs are included within that Word: For damnun its proper and general Signification dicitur a demendo, cum minutione res deterior fit, and in this Sense Costs of Suit Damages to the Pl. for by them res fua diminuitur. But wh the Pl. shews the Wrong done to him to the Damage of suc Sum, that is to be taken relative for the Wrong which is before the Writ brought, and are affessed occasione transgr p

Cr. El. 568.

PART X.

and can't extend to Costs of Suit, which are future, and of another Nature, fe. to legal Expences, and whereof no Corrainty could then be known. So thefe are two diffinct Things, damns pro injuria illata, and expense litis; and therefore the faid Acts of Parl of (a)2 H.4. and 8 H.6. they are taken (a) 2 H.4c. 11. their proper and general Signification, and in favour of the 8 H. 6. c. 9. who always when he recovers is favoured in Law. But the Case at Bar, it is taken in its relative Signification, arding the Wrong which is past; and so they are exof vaffested by the Jury, and that also in the Pl.'s favour: ad the Difference was well observed betwixt personal Acens, and real Actions in which Damages are to be recored: For in personal Actions, they shall declare to Danages, because they shall recover Damages only for the Wrong done before the Writ brought, and shall recover no Demages for any done pending the Writ, but in (b) real Ac- (b) 2 Inft. 286. ions the Demandant shall never count to Damages, because e is to recover Damages pending the Writ: And therefore ie held in (0) 33 H. 6. 47. 4. In a Writ of Entry fur dif (c)Jenk. Cent. 6. wer Damages, and a Writ is awarded to enquire of the Da-Fitz. Damages that the Pl. shall recover Damages from the Time 34. the Diffeifin to the Time of the Awarding of the Writ fenquiry of Damages, and not after, notwithstanding that Writ of Enquiry was not served after seven Years past, Iffue be joined triable by Verdict, he shall recover Dabe Verdict: But in a Precipe quod reddat, of a Rent of e Possession of the Demandant himself, he shall recover he Arrearages behind, as well at all Times pending the Writ as before, usq; diem Judicii redditi, because it is his (d) 2 lost. 286. Isheritance: And therewith agree 7 E. 4. 5. a. vide 13 AS. (e) 11 Co. 5. b. 0 R. 3. 24. 7 H. 4. 16. a. 16 H. 7. 5. a. 6. a. And as in (d) real Actions the Demandant shall not count 1 Brownl. 233.

Damages, because it is incertain to what the Damages 1 Bulstr. 157. ill amount, because he shall recover those pending the Writ; Cr. Jac. 118. in the Case of Costs they shall be recovered for the Ex- 349. 384, 385. ences pending the Writ, which being uncertain, can't be i Rol. Rep. 30. comprehended in the Count, because the Count extends to 31.

Damages past, and not to Expences of Suit. And Costs are (f) Plowd. ot always included in this Word Damages, for if Trespals 91. a.b. brought against two Def. and the one is found guilty by 42 E. 3. 7. b. himself, and the other guilty by himself; and (e) Damages (g) Cr. Jac. 69, the severally affessed, yet the Costs shall be jointly taxed: 297.

And therewith agree 36 H. 6. 13. a. and 12 E. 4. 1. a. And Yelv. 45, 70. the Books in (f) 42 E. 3. and 2 H. 7. were agreed to be good Cr. El. 544. Law, so. that the Pl. shall never recover (g) more Damages, i Bultr 49.

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(a) Cr. Jac. 69, Yelv. 45, 70. 1 Bulft. 49. Cr. El. 544, 568, 866. 1 Rol. 578. (6) Bulft, 49.

than he has (a) declared for, sc. Damages for the Wrong done; but Expense livis may be added thereto; and therefore (b) 34 E. 3. Damages 7. was denied to be Law, sc. That in Waste the Pl. declared to the Damages of 10 1. and the Jury found Damages to sol. and they were trebled; and the Reason there given is, because the Stat. of Glouc. enacts, that the Defendant make Agreement of the treble of what the Waste is taxed at; but the Stat. is to be intended of Damages lawfully taxed: And so it was held by the Lord Dyer Trin. 10 El. in an Action of Waste brought by the Lord Abergaveny, that the Jury could not value the Waste more than the Pl. has alledged in his Declaration:

(c) 1 Rol. 578.

(e) 1 P.ot. 578. Cr.-El. 508.

(f) Antea 41.2, 5 Co. 25.2. Pret. 4. R.p.

(g) 9 Co. 14. 2. the Cale in (g) 45 E. 3/19, 20. where the Can the Sifter of Perk. Sect. 168. Lands were given to f. de C. with one Johan the Sifter of

And therewith agrees Hill. 3 E. 4. Rot. 137. And yet in fome Cases the (c) Pl. shall recover more Damages than he himself has declared for, as in 8 H. 6. 5. a. in (c) Detinue, the Pl. shall recover more Damages than he himself has de-(d) 1 Rol. 578. clared for. And as to the Case of (d) 13 H. 7. 16 8 17. which Case has been cited out of Brooks's Abridgment, the Book at large was confessed to be good Law, For the Case, as it is there reported is such; In an Action of Trespass brought by Dorrel, he declared to the Damages of 20 Marks, the Def. pleaded Not guilty: And they taxed the Damages and Costs of his Suit jointly to 22 Marks, which is the principal Case Word by Word, which is clear that the Verdict can't stand; for it doth not appear how much is for (e) Damages, and how much for Costs; and then it may be they have given greater Damages than the Pl. has declared for, so the Verdict is Incertain; and therefore Brian faith well: That in fuch Case the Pl, can have Judgment but of 20 Marks: Then all that follows is but the Collection of the Reporter: So that according to his Opinion, and of others the Jury can't give Costs beyond the Sum of the Damages on which the Pl. has declared, which Collection is not warranted by the Opinion of Brian: For in as much as the Damages and Costs were jointly affested, the Plaintiff could not have Judgment but of 20 Marks for the Incertainty, altho' Costs might be given beyoud the Damages in the Declaration. And therefore (f) Abridgments are of good and necessary Use to serve as Tables to find the Cases in the Books at large, or Records, and

not to ground any Opi'n upon Abridgments: For Example,

the Donor, Habendum eis & bæredibus suis imperperuum, and Fire. in abridging the Case, Title Tail 14. saith, That the Gift was adjudged Pee-fimple, and not Frank-marriage; and Statham in abridging the Cafe Title Tail, saith, it was adjudged an Estate in FrankAngles of the second second second

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marriage, and Brook Title Frank-marriage 1. faith, Quen, quia non adjudicatur; ideo satius est petere fontes chan sectori rivulos. Nota Reader, the principal Case was 2 Show. 36, 57.

adjudged by the Court of King's Bench, and afterwards
that Judgment was affirmed by all the Justices of the
Common Plea, and Barons of the Exchequer, and the Record was fent back into the King's Bench according to he Statute professional population

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Mich. 10 Jacobi Regis.

Cheyney's Cafe.

HIS Term Serjeant Nichols moved this Case: Che ney brought a Writ de valore maritagii, and Islu was taken upon the Tenure; and before the Justices of Nist prius in the County of Tork it was found for the Plaintiff, and the Jury did affels 40 s. Damages, and 10 s. Costs, and did not enquire of the Value of the Marriage as they ought to have done; and he moved, that the Plaintiff might have a Writ to enquire of the Value to support the Plaintiff might have a Writ to enquire of the Value to support the Plaintiff might have a Writ to enquire of the Value to support the Plaintiff might have a Writ to enquire of the Value to support the Plaintiff might have a Writ to enquire of the Value to support the Plaintiff might have a Writ to enquire of the Value to support the Plaintiff might have a Writ to enquire of the Value to support the Plaintiff might have a Writ to enquire of the Value to support the Plaintiff might have a Writ to enquire of the Value to support the Plaintiff might have a Writ to enquire of the Value to support the Write to enquire of the Value to support the Write to enquire of the Value to support the Write to enquire of the Write to en ply the Defect of the Verdict; and he cited two Prece dents, one, Pasch. 3 Jac. Rot. 745. in Ravisbment of War brought by the Lord Barkly against Hill; the Defendant pleaded Not guilty, the Jury found him Guilty, and the the Heir was within Age, and married, &c. & affiden damna & mis. and found not the Value of the Marriage and a Writ issued to enquire of the Value of the Marriage And the like Writ awarded Trin. 38 Eliz. Rot. 170 And in 4 Mar. Dver (a) 135. in a Quare impedit brough by Poyner, the Issue was found for the Plaintiff, but b his Negligence the Jury was not charged to enquire of the four Points, sc. De plenitudine, ex cujus Presentati one, si tempus semestre transferit, and the Value of th Church per annum; there the Plaintiff may have a Wr to enquire of these Points. Vide & El. Dyer (b) 241.9 El. D. 260. And the Case was oftentimes debated, and at last it was resolved, that the Verd. was insufficient: For the C. Just said

(a) 2 Rol. 722. Dyer 135.pl:12, 2 Keb. 409.

(b) Dyer 241. pl. 48. Hou, 152, 154, 2 Rol. 387. 11 Co. 56. 2. 2 Rol. 722.

That in a Writ de valore Maritagii, three (a) Things are (a) 9 Co.72. a to be recovered, s. The Value of the Marriage, Damages, and Costs, quod fuit concessum per tot Cur'. 2. It was resolved, That altho' the Isue be in this Case de valore refolved, Maritagii upon the Tenure, yet, as upon a Consequent or Dependent upon the Issue, the Jury are, as Parcel of their Charge, if they find for the Plaintiff, to enquire of the Value of the Marriage, of Damages and Costs; and if the Jury affels excessive Value, or excessive Damages, Attaint 2 Rol. 722. les thereof. And therefore in Affife, if the Issue be joined upon a Release, and a mediate Ouster confessed, there if the Issue be found for the Plaintiff, yet as Parcel of their Charge, the Recognitors of the Affise shall enquire of the Seifin and Diffeifin; for that is the Point of the Writ, and thereupon Attaint lies: And therewith agree 11 H. 4. 27. 34 H. 6. 32 b. 16 Aff. p. 1. 16 E. 3. Attaint 41. Vide 32 E. 3. Cesavit 25. 33 H. 6. 25. And in (b) Trespass against two, (b) 11 Co. 7. 2: one comes and pleads Not guilty and is found guilty, in this Case this first Enquest shall assess Damages for the whole Trespass by (c) both Defendants; and afterwards the (c) 11 Co. 5. b. other comes and pleads Not guilty, and is found guilty, the finding of the Damages by the first Enquest to which he ras not Party, shall bind him; and therefore if they are outragious or excessive, the Defendant in the last Enquest hall have an Attaint: And therewith agree 44 E. 3. 7. nd F. N. B. 107. E. So in Trespass Quare clausum fregit, Issue is joined upon a Feoffment, and the Jury give outgious Damages, an (d) Attaint lies, for the Enquiry of (d) 11 Co. 6.2. Damages, is subsequent upon the Issue, and Parcel of 2 Sid. 93 eir Charge. So in the Case at Bar, if the Jury had Br. Atraint 17. and outragious Value or Damages, an Attaint lay there- 1 Rol. Rep. 30.

1. 3. It was resolved, That the Omission in the Ver- 349. A should not be (e) supplied by a Writ of Enquiry of (e) Attaint, which would be mischievous, for then such mission might be on Purpose to deprive the Pl. of his Atought to enquire of any Thing upon which no Attaint 39 H. 6. 1. 2. a, there the Omission of it may be supplied by a Writ of 1 Rol. 280. rough but b nire d equiry of Damages, (as in the said Case of Quare Imp', 1 Rol. Rep. 30. enquire of the said sour Points, for of them no Attaint Br. Attaint 44. as it is held in (g) 11 H. 4. 80. because as to them (g) 1 Rol. 280. *fentati* of th Enquest is but of Office) but in all Cases when El. DPoint is omitted whereof Attaint lies, there it shall not ft. said supplied by a Writ of Enquiry of Damages, upon which Attaint lies: And therefore the Precedents which have Tha ancited, and all others which are against these Rules, passed

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the Rule of Law: And therefore in Decimue, if the Jury find Damages and Costs, and no Value, as they ought, it shall not be supplied by a Writ of Enquiry of Damages for the Reason aforesaid: And therefore by the Rule of the Court a new Venire facias was awarded.

Ral. 722.

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The Case of the Mayor and Burgesses of Linne Regis, concerning Misnosmer of Corporations.

Norss. S. J. Ohannes Payne nuper de Catton in Com' præd' generosus, execur testament Johann' Payne nuper dict' Johannis Paine de Linne Regis in comitatu Nors. armiger', sum' fuit ad respondend' Majori & Burgensibus de Linne Regis in comitat' Nors. de placito quod reddat eis tres mille libras quas eis injuste detinet, &c. Et unde iidem Major & Burgenses per Henricum Bastard attornatum suum dic' quod cum prædictus Johannes Payne testator in vita sua, vicesimo septimo die Januarii, anno regni domini regis nunc Angliæ, &c. sexto, apud Gaywood per quoddam scriptum suum obligatorium concessisse se teneri eisdem Majori & Burgensibus in prædict' tribus mille libris, solvend' eisdem Majori & Burgensibus cum inde requisit' suisset, prædict' tamen Johannes Payne testator in vita sua, ac prædictus Johannes Payne executor post mortem ipsius Johannis Payne testatoris, sicet sepius requisit', prædict' tres mille libras eisd' Majori & Burgensibus non reddiderunt, sed ill'eis reddere contradixerunt, ac prædict' Johannes Payne execut' ill'eis adhuc reddere contradic' ac injuste detine

The Case of the Mayor, &c. PART X.

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tinet, unde dicunt quod deteriorat' funt, et dampnum habent ad valentiam centum librarum & inde producunt sectam. &c. et proferunt hic in curiam scriptum prædictum quod debitum prædictum in forma prædicta testatur, cujus dat'

est die & anno supradictis,

die & anno supradictis, &c. Et prædictus Johannes Payne executor per Thomam Blofield Attorn' fuum ven' & defend' vim & injur' quando. &c. Et dic quod ipse de debito prædicto virtute scripti prædicti onerari non debet quia dic', quod scriptum illud non est fact. prædicti Johannis Payne testatoris; & de hoc ponit se super patriam, & prædict. Major & Burgenses fimiliter: Ideo precept'est Vicecom' quod venire faciat hic a die sanctæ Trinitatis in tres septimanas duodecim, &c. per quos, &c. Et qui nec, &c. Ad recogn', &c. Quia tam, &c. Ad quem diem jurata inter partes præd' de prædicto placito posita fuit inde inter eas in respectum hic usque ad hunc diem, scilicet in Octabas Sancti Michaelis tunc proxim' sequen', Nisi Justic' domini Regis ad assisas in comitat' prædict' capiend assign' per formam statuti, &c. die lunz vicesimo septimo die Julii proxim. preterito, apud Castrum Norwic. in comitat. prædict. prius venissent; & modo hic ad hunc diem ven' tam prædict. Major & Burgenses, quam prædictus Johannes Payne executor per attorn' suos prædictos; & præfat' Justic' ad assisas, coram quibus, &c. mis. hic recordum suum in hæc verba, Postea die & loco infracontent' coram Edwardo Coke milite, capitali Justic' domini Regis de banco, & Johanne Croke milite uno Justic' dicti domini Regis ad placita coram ipfo rege tenend' affign' Justic' ejustem domini Regis ad assisas in comitat. prædict. capiend' affign', per formam statuti, &c. ven' tam infrantminat. Major & Burgenses quam infrascript. Johann' Payne executor per attorn' suos infracontent': Et Jur' Jurat' unde infra .fit mentio exact. fil'iter ven', qui ad veritatem de infracontent dicend', electi, triati, & jurati, dicunt super sacramentum fuum, quod diu ante confection' scripti obligatorii infraspec', dominus Henric' nup' Rex Angl' octavus, septim' die Julii anno regni sui vicesimo nono, per literas suas patentes sub magno figillo suo Angl' figillat', gerent' dat. apud Westmonaster' eisdem die & anno; Ac jur' prædictis in evidentiis ostens. recitand' per easdem literas suas patentes, qd, cum idem nuper Rex per literas suas patentes quarum dat' fuit vicesimo septimo die Junii, an. regni sui sexto decimo, de gratia sua speciali, ac ex certa scientia, & mero motu suis, nuper concesserat & per easdem literas suas patentes confirmaffet, pro se hæredibus & successoribus suis, Majori

& Burgenfibus & inhabitantibus burgi sui de Linne Ep'i in com' suo Norf. quad ipsi imperpetuum essent unum corpus corporat, & una communitas perpetua in re & nomine, & quod haberent successionem perpetuam, ac nomen Majoris & Burgeof, burgi præd' Linne Ep'i in com' Norf, haberent & gererent ; & per idem nomen essent personz habiles & apaces in lege, ad habend' & perquirend' terras, tenementa, bona, & catalla, ac alias possessiones quascunq; ac pl'itare & lacitari, respondere & responderi, desendere & desendi pomiffent & valerent, coram quibuscunq; Justic', five Judicibus firitualibus five temporalibus in quibuscunq; curiis, ac in ibus & fingulis actionibus, caufis, materiis, querelis, & demaund' cujuscunq; generis forent five natura, eod' modo quo exteri legei dicti nuper regis, persona habiles & capaces in lege placitare & implacitari, respondere & responderi, defendere & defendi potuissent, quodo; dict Major & Burgenses & corum successores haberent aut habere potuissent unum commune figillum pro negociis suis & aliis agend' infra burum præd' de tempore in tempus, contingen five emergen, elerviens, cum diverfis aliis libertatibus, franches. concessiountent' & spec', prout in eisdem literissuis paten plenius ac minifestius liquebat & apparebat, ac cum postea per quodd attutum nuper in parliament' ipfius nuper regis apud Lond' mt, tertio die Nov. an. regni sui vicesim' prim' & abinde forn' ulq; ad Westm'& ibid' tent', & de tempore illo conmust per diversas, prorogationes usq; quart diem Feb anno rgni 27. & tunc & ibid' tent', inter cætera inactitat fuisset, d'dict' nup' rex hæredes & successor sui reges Angl' habetot, tenerent, & gauderent fibi imperpet dominia five matris de Linne Ep'i, alias dict' Bishops Linne & Gaywood n' alia cum o ibus & fingul' suis, pertin'; necnon omnes li-ertat', franches, bona & catalla, waviat' & extrahur', vis inc pleg, cur', proficua cur', ac omnia & fingula alia temralia possess. & hæredirament' cum pertin' in Linne Ep's Gayw' præd', quæ nuper ante tunc pertinuissent nup' Epipo Norwici; & quæ idem nup' Episcopus habuisser in jure per Ep atus sui præd' prout in eodem actu plenius liquedict nuper rex Henricus octavus, pro eo quod per eunmactum, hujusmodi maneria & possessiones sibi & halibus suis Regibus Angliz annechabantur & fuerunt, claravit, pro se & hæredibus suis, quod eadem villa Linne Episcopi de cætero imperpetuum nuncupatetur, vocaretur, & nominaretur Linne Regis, vulgarit incupat' King's Linne, & non per al' nomen; & qd' humodi nomen de Linne Episcopi alias Bishoppes Linne de

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The Case of the Mayor, &c. PART X.

extero destitueret', & deprivaretur; et ulter' dict' nup' rex H. 8. ex gratia fua speciali, & mero motu suis, ac ob amorem quem erga prædictos dilectos fideles fubditos fuos Majorem, & Burgenses burgi sui de Linne præd' in comitat' suo Norf. & burgum illum & Inhabitant' ejusd' habuit & geffit, cupiens insup bonam pacis quietem & tranquilitatem in codem burgo continue haberi, ac de tempore in tempus augmentari, ex quibus omnia prospera, utilitates, & commoda suum indubitat' capiunt exordium, concessisset, ac per easd' literas suas patentes concessit pro se hæredib' & successoribus suis, præd' Majori, Burgensibus, & Inhabitantib' burgi sui præd' quod ipfi de catero imperpetuum nomen Majoris & Burgens. burgi sui de Linne Regis vulgariter nuncapat' King's Linne in comitatu suo Norf. haberent & gererent; et per idem nomen vocarentur & nominarentur, et non per aliud nomen, & qd' per idem nomen effent persone habiles & capaces in lege ad habend' & perquirend' terras & ten'ta, bona & catalla, & ali-as possessiones quascunq; ac pl'itare, & impl'itari, respondere, & responderi, desendere, & desendi potuissent & valerent, coram quibuscunq; Justic', sive Judicibus temporalibus, sive spiritualibus in quibuscunq; curiis ac in omnibus & fingulis actionibus, causis, materiis, querelis, & demaund' cujuscunq; generis forent five naturæ, eodem modo quo cæteri ligei di-Eti nuper reg' personæ habiles, & capaces in lege placitare & implacitari, respondere & responderi, defendere & defendi potuissent, prout per easdem literas patentes Jur'præd'in evidenciis ostens. int'alia plenius liquet & apparet; & ulter' Jur' præd' dicunt sup' sacr'm suum præd', qd' post consectionem Ir arum patentium præd', scil't, præd' vicesimo septimo die Jan', an reg' Dom' Reg' nunc Angl' sexto infrascript', prædict' Johannes Paine testator in vita sua scriptum obligatorium in narration' infrascript' spec' fecit, figillavit, & ut fact' fuum deliberavit præfat' Majori & Burgenfibus burgi Domini Regis de Linne regis vulgariter nuncupat' King's Linne in comitatu suo Norf. in præd' liter' patent' nominat' per nomen Major' & Burgens. de Linne Reg' in comitate Norf. sed utrum super tota materia præd' per ipsos Jur'i forma prædict' compert' script' obligator' præd' in narration infrascript' spec' fit fact' præd' Johan' Paine testat' necne, ii dem Jur' penitus ignorant; et inde pet' advisament' Justic & cur' hic, &c. Et si sup' tota mater' præd' per ipsos Jur'is forma prædict' compert' videbir' Justic' hic, qd' script' præd'i narration' infrascript' spect' sit sc'm præd' Jo' Paine testat', tun iid'Jur'dic sup sacra'm suum præd'qd' script' præd'est fact præd J.Paine testator'; et tunc assid'dampn' a præd'Major'&Burgen occasion' detent' debiti infra specificer', ult' mis. & custag. su

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præd rgen g. fu per ipsos circa sectam suam in hac parte apposit, ad duodecim decim denarios, & pro mis. & custag' illis ad duodecim denar. Et si super tota materia przdicta per ipsos Jur' in sorma przdicta comperta videbitur Justic' hic, quod scriptum przdictum non sit sactum przdict' Johan' Paine testatoris, tunc iidem Jur' dicunt super sacramentum suum, quod scriptum przdictum non est sactum przdicti Johan' Paine testatoris, prout przdictus Johan' Paine executor interius placitando allegavit: Et quia Justic' hic se advisare volunt de & super przmissis priusquam judicium inde reddant, dies dat' est partibus przdict' hic usque de audiendo inde judicio suo, eo quod iidem Justic' hic inde nondum, &c.

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The Case of the Mayor and Burgesses of Linne Regis, concerning Misnosmer of Corporations.

THE Mayor and Burgesses of Linne Regis in the County of Norfolk, brought an Action of Debt against John Pain Gent. Executor of John Pain Esq; on a Bond made by the Testator to the Plaintiss, 27 Jan. anno 6 Jac. Reg. in 3000 l. The Desendant pleaded not the Testator's Deed, &c. and the Jury gave a special Verdict: King H. 8. 7 Junii, anno regni sui 29. by his Letters Patent under the Great Seal, reciting, That the said King by his Letters Patent 27 Junii, anno regni sui 16. had granted to the Mayor and Burgesses and Inhabitants burgi sui de Linne Episcopi in comitatu suo Norfole quod ipsi imperpetuum essent unum corpus corporatum, & una communitus perpetua in re & nomine & quod habeant successionem perpetuam, ac nomen Majoris & Burgenssum burgi predicti Linne Episcopi in comitatu Norfole haberent & gererent, & per idem nomen essent persona habiles & capaces in lege, &c. And by the same Letters Patent, reciting

that whereas by Act of Parliament, 4 Feb an. 27 H. 8. it was enacted, That the faid King, his Heirs and Successors Kings of England, should have the Manors of Linne Epi-copi, and Gaiwood, inter alia, the said K. by the said Let. Patent declared, Quod eadem villa de Linne Episcopi de cetero vocaretur & nominaretur Linne Regis, vulgariter nuncupat' King's Linne, & non per aliud nomen: And granted to the faid Mayor, Burgesses and Inhabitants burgi sui pred quot ipsi imperpetuum nomen Majoris & Burgensium burgi sui de Linne Regis vulgariter nuncuput King's Linne in comitatu suo Norf. haberent & gererent, & per idem nomen vocarentur & nominarentur & non per aliud nomen, & qd. per idem nomen essent persona habiles, &c. And the Jury further found, That 27 Jan. Regni Regis Jacobi 6. prad' Job'es Pain Testator in vita sua pradictum soript' obligatorium fecit, sigillavit, & ut fact suum deliberavit prefat Majori & Burgensibus burgi domini regis de Linne Regis, vulgariter nuncupat K.'s Linne in Com' fue Norf. per nomen Majoris & Burgensium de Linne Regis in com' Norf. sed utrum super tota materia, &c. pred' scriptum obligatorium in narratione specificat' sit factum pred Johannis Pain testatoris necne, iidem Juratores ignorant & inde petunt advisamentum Justiciariorum & Cur', &c. And this Case was oftentimes argued at the Bar. And it was objected on the Defendant's Part. That the faid Bond (a) varied from the true and right Name of the (a) 11 Canal Corporation, and by Confequence was not the Testator's Deed; and the material Variances were, because they were incorporated by the Name of Majoris & Burgensium burgi domini Regis de Linne Regis, &c. and the Bond was made to them per nomen Majoris & Burgensium de Linne Regis, omitting after this Word Burgensium, these two Words, (b) Burgi Regis, which are Parcel of the Name of the In- (b) Brown 17: corporation. And it was observed by them, first, that the Name of the Corporation is like to the proper (c) Name, (c) 10 Co. 28.b. or the Name of Baptism. 2. After the King has given 38 E. 3 15.2 them their Name, then it is added, Et quod per idem no- 21 E. 4. 56. 21. men vocarentur, &c. 3. Negative Words are added to the said affirmative Words, Et non per alind nomen: But the Bond varies from the proper Name of the Incorporation, and is not made per idem nomen, but per aliud nomen, directly against the Letter and Intention of the King's Charter. And it was strongly urged, That the (d) to Co.29.b.
(d) Place of the Incorporation is of the Essence of an 1 Rol. 512.
Incorporation; for without a Place, no Corporation can be Plowd. 150.2.

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founded, and the Place is the principal Part by which the

(a) Mich. 29 & 30 El. in the Exchequer, the Case of the Hospital of the Savoy. 1 And. 202. Hob. 125. 1 Leon. 159 Moor 228, 865. Antea. 32. b.

Incorporation can be known and diftinguished from others and therefore may be fitly refembled to a Man's Face which is the principal Part by which he is known and discerned: And for that a Cafe was cited Mich. 29 & 30 El. in the Exch. in Ejectione firme, in which (a) Mariet was Pl. and Pajchall and others Defendants, of a Demise made by Tho. Fanshawe Esq; the Queen's Remembrancer of her Court of Exchequer, of certain Lands in Denge in the County of Esex, &c. and upon Not guilty pleaded, the Jury gave a special Verdict to this Effect, The Master and Chaplains of the Savoy were incorporated per nomen Magistri & Capellanorum Hospitalis Henrici nuper Regis Angl' Septimi de Savoy by Force of certain Let. Patent made anno 4 H. 8. And the Master and Chaplains of the said Hospital being feifed in Fee of the Manor of Denge in the County of Effex, whereof the Lands in which were Parcel, anno 26 E. 6. by Deed indented demifed the faid Manor to John Paschall for 99 Years, per nomen Magistri Hospitalis Henrici Regis Angl' septimi vocat' the Savoy, & Capellanorum ejusa Hospitalis; and if this Lease was made according to their true Name of Incorporation, was the Question: And it was adjudged in the Exchequur that the Lease was void, because they had mistaken their Name of incorporation in the most material Part of it, sc. in the Place, for the true Name is, Hospitalis, &c. de (b) Savoy, and in the Demise it is Hospitalis, &c. vocat' the Savoy; and the material Variance, in respect that de fignifies the Place it self, and vocat' fignifies a Name which may be applied to another Place; as Prior & confratres Hospitalis Sancti Johannis de Mount Carmel, Bethlehem, and others, which in Truth are in the Land of Canaan, and yet are applied to certain Places in England: All which you may see cited before in the Case of the Hospital of the Charter-house; and therefore I have omitted them here. And it was faid, that upon the faid Judgment, a Writ of Error was brought in the Excheq. Chamber, where the Case was often argued again at the Bar, and yet the said Judgment was never (d) reversed. So in the Cale at Bar, forasmuch as this Word Burgi is omitted, which is the Place of the Incorporation, it is such a material Variance, that the Bond is void: And altho it is faid, de Linne Regis; yet that well proves that it is a Town, but it doth not thereby appear that it is a

Borough, for every Borough is a Town, but every Town is not a Borough. And therefore Litt. lib. 24 cap. 10. of Burgage saith, It is to be known, (f) That

(b) Moor 865. Hob. 125.

(d) Hob. 125.

(e) Co. Lit. 109. 2. 110. (f) Co. Lit. 109. a. b. Lit. Sect. 164.

the ancient Towns called Boroughs are the most ancient (a) (a) Lit. Sect, Towns that are in England: For those Towns which are 164. now Cities or Counties, in ancient Times were Boroughs, a.b. and called Boroughs, and from fuch ancient Towns called Boroughs came the Burgesses to Parliament, when the K. had summoned his Parliament. Also for the greater Part fich Boroughs have divers Customs and Usages which other Towns have not, &c. By which there appears a manifest difference in Judgment of Law betwixt a Borough and a Town; and the Opinion of Cavendiff Chief Justice in 40 Aff. p. 27. was cited, where he holds that all the ancient Boroughs are of Record in the Exchequer. And with Littleton agree, 41 E. 3. 32. a. 21 E. 4. 53. b. & 54. a. 21 H.5. 15. by Frowick, &c. Another Variance was observed, That his word (Regis) was omitted, for the true Name of the Corporation is burgi sui de Linne, i. Regis de Linne; and in he Bond not only Burgi is omitted, but Regis also; which (sit was urged) was also a material Variance, for Regis hight to be twice added, sc. Burgi Regis de Linne Regis; and for that the Case of (b) Eaton College, Trin. 3 & 4 P. (b) Moor 13.

M. Dyer 150. was cited, where it appears that K. H. 6. Dy. 150 pl. 84.

incorporated the said College per nomen prapositi & 1 Leon. 159.

Collegii Regalis Collegii beata Maria de Eaton juxta Jenk. Cent. 214.

Windsore, and in the Time of E. 6. Sir Thomas Smith Knt. king Provost there, a Lease was made per nomen præposi-S sociorum Collegii regalis de Eaton juxta Windsore ohitting Collegium in the first Place, and yet in the second lace Collegii Regalis was added, & per Opinionem omnium suffic it was a void Lease, & sic adjudicat' fuit Mich. 10 11 El. Regine: So in the Case at Bar, the Omission of his Word Regis in the first Place, altho' it is observed in c second, makes a material Variance. Many other Cases ere put upon the general Ground of Misnomer of Corporams, which I have on purpose omitted, because these Cases hich are here mentioned, were the most material, and all other shall be generally cited with Reference to the ooks at large in the End of this Case. But the Court held de faid Bond good, and that the Plaintiffs ought to have (c) Brownl 52. tolved. I. As to these Words per idem nomen, & non ralind: That this word Idem has two Significations, sc. m fyllabis & verbis, and idem re & sensu, and the Name a Corporation in Grants or Conveyances need not be i-Myllabis & verbis, but it is sufficient if it be idem & senfu: And according to these Significations dia Cases have been resolved and adjudged, Mich.

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The Case of the Mayor, &c. PART X.

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(a) Mich. 10El. 10 & 11 El. Dy. 278. The Dean and Chapter of (a) Carlile Cafe of Dean and Chapter of Carlile Moor 233. 1 And. 203, 206, 208. 1 Leon. 159. Dy. 278. pl. 1. 2 Bulftr. 303. Jenk. Cent.235.

were incorporated an. 39 H. 8. by the Name of Decanus & Capitul' Ecel' Cathedralis Santte & individue Trinitatis Carliensis, and they made a Lease by this Name Decanus Ecclefie Cathedralis Santte Trinit' in Carlile, & tot' Capitulum de Ecclesia præd' which Lease is not made per idem nomen quod est idem Gyllabis seu verbis : For first this word Individue is omitted. 2. In Carlile, where the true Name is Carlienfis, fc. of Carlile. 3. This word Totum is added. 4. The Order of the Words is not kept, for the true Name of the Corporation is Decanus & Capitul' Eccl' Cathedral Sanct & individua Trinit' Carliensis, and the Lease is, Decanus Eccl' Cathedral', &c. & tot' capit' de Eccl' pred': But biis non obstant'. It was resolved by Dyer, Weston, Welsh, Southcot, Carus and Harpur, that the Lease was good notwithstanding these Variances, and the Reason is there given, because these Variances are not in the Substance of the Name. In Mich. 29 & 30 Reg' Fliz. between Hall and Wingat in Ejectione firme in the King's Bench, the Case was, That the Dean and Canons (b) of Windfor were incorporated by Act of Parliament in 22 E. 4. by this Name : The Dean and Canons of the King's free Chapel of St. George the Martyr within his Castle of Windsor, and in the Time of the Reign of King Philip and Queen Mary, they made a Lease of certain Lands by this Name, The Dean and Canons of the King and Queen's free Chapel of St. George within the Ca file of Windfor: And in that Case three Variances were ob ferved; 1. Where the Name of the Corporation was by the Act of 22 E. 4 The Dean and Canons of the K.'s free Cha pel: The Leafe was made by Name of Dean and Canon of the K. and Q's free Chapel, &c. 2. Where the Incorpora tion was, of St. George the Martyr, the Lease was, of St George, omitting the Martyr. The 3. was, within his Caftle fc. within the King's Castle of Windsor. And it was adjudy ed that in that Case one of them was a Variance in Sub stance, sc. (c) of the King and Queen's free Chapel, for the true Name of the Corporation by the faid Act of 22 E. was of the King's free Chapel: And altho' at the Time the Making of the faid Leafe, in Truth the Chapel was the King and Queen's free Chapel, yet the Corporation ought be fuch as was given by the Founder, and that shall not altered by the Alteration of the Name of the Founder, or

the Owner of the Castle, as if a College is incorporated the Time of E. 6. by the Name of Master and Fello

of King's College, if they make a Leafe in the Reign of El. they can't make Lease by the Name of Master and I lows of Q. College: But for the other two Variances t

(b) Mic. 29 & 30 Bl. in B. R. the Cafe of Dean and Canons of Windfor. Palm. 494 1 Leon. 162. Moor 230. n. 1Rol. Rep. 229 Hob. 124.

(c) Moor 230 Hob. 124.

(a) 1Leon. 160, Court resolved, that they were Variances in Syllables 2 2 Bulitr. 53,86 Words and not in Substance, & (d) parum different que e

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concordant, for St. George includes the Martyr, as the Trinity implies and includes this adjective individue; and within (a) his Castle of Windsor, and within the Castle of Windsor, (a) Moor 71, is all one in Substance and Effect. In which Case the Ch. Juffice was of Counsel with Wingat, and in another also in which Wingat was Plaintiff, and Judgment was given for him in both. Hill. 30. Eliz. in the King's Bench betwixt

Hen. (b) Fisher Pl. in Ejectione firme, and Wm. Bois Def. (b) Hill. 30 El.

of certain Lands in Ellam in Kent the Case was; by Act of The Case of

Metton College in Conford was incorporated. Parliament anno 1 Maria, a College in Oxford was incorpo- in Oxford in rated per nomen Gardiani & Scholarium domus sive Collegii B. R. Scholarium de Merton in Universitate Oxonie, and they I Leon. 162. made a Lease of the said Lands per nomen custodis domus Hob. 125. five collegii de Merton in Oxonia & scholar' ejusdem domus! Lane 15,34.

And in that Case four Variances were observed, 1. For this Moor 266. Word, Gardianus, Custos; 2. Where the true Name of the College was domus sive collegium scholarium de Merton; the Lease was per nomen domus sive collegii de Merton; omitting (c) Scholarium, 3. For in Universitate Oxonie; the (c) it Co.20 1. Lease was in Oxonia, 4. Scholares were misplaced, for they i Builtt. 91. came in the End, whereas in the Act they are named im- Hob. 125. mediately after the Gardian: And it was adjudged; that for the second Variance, it was a Variance in Substance; for the faid Act had baptized the College by the (d) Name of (d) Cr. El. 106. the College of Scholars of Merton; and they made the Leafe by the Name of the College of Merton himself, who in Truth was the Founder: But for Gardianus, he is Custos, and for the University of (e) Oxford and Oxford, they are (e) Cr. El. 338, all one in Effect and Substance, and therefore no material 339.
Variances; and for the Misplacing of the said Words; that Moor 361. is not material dummodo proprius sensus remanet. And the Anders. 196. Chief Justice was of Counsel with the said College against the faid Lease. So in the Case at Bar, the said Variances ne only in syllabis & verbis; and not in (f) sensu & re ip- (f) Cr. El. 106. and therefore are not material: For per idem nomen, hall be intended idem sensu & re, and not per aliud; i. ali-Menfu & re. And it is to be known, that in the Case at Bar, these Words Burgenses de Linne Regis, (g) imply that Linne Regis is Burgus, for Burgus and Burgenses sunt con- 1 Rol. Rep. gata, and as Littl. faith ubi supra from Boroughs came the 118. Surgesses, Se and Linne Regis imply allo, that it is Burgus hus, i. Regis; and these Words vulgariter nuncupat King's Linne are included in these Words Linne Regis; so that the Name in the Bond by Matter apparent therein imports a sufficient, certain Demonstration of the true Name of the

Incorpo

1 Leon. 163. Br. Varian. 75.

STADOWN!

(a) 1 Anders. Incorporation. 5 E. 4. 20. b. The Abbot of (a) York was. 203, 204, 208, incorporated by this Name Abbas Monasterii beate Marie Cr. El. 338. Eborum, and a Bond was made to the Abbot by this Name, 1.5 E. 4.20. b. Abbati Monasterii beate Maria extra muros civitatis Eborum, and altho' the Abbey was extra muros civitatis Ebor'; yet because in Truth it was within York, the Bond was good, and therefore the Abbot there brought his Action of Debt by his true Name, and in his Declaration he faid that the Bond was made to the Plaintiff per nomen, &c. which implies an Averment that the Abbey was within York; and the Writ was awarded a good Writ by the Opinion of the whole Court; and yet there was more Variance in syllabis & verbis, than in the Case at Bar, but because in Truth and Substance, as appears by the Averment debors all was one in Effect, the Bond made to them was good, and yet the Name in the Bond doth not import of it felf the true Name of the Corporation without Averment debors: And therefore in pleading, or in a special Case, in many Cases, if by express Averment, or by the finding of the Jury it shall be made apparent to the Court, that the true Name of the Incorporation, and the Name in the Leafe, Grant, &c. are all one in Effect, it will much enforce 'the Matter, altho' in Words there is some seeming Difference: And therefore it was well found in the special Verdict in the Case at Bar, That the said John Payn the Testator, predictum scriptum obligatorium fecit, sigillavit, & ut factum suum deliberavit prefatis Majori & Burgensibus burgi Domini Regis de Linne Regis vulgariter nuncupat' King's Linne in comitatu suo Norf. (which is the Name of the Corporation without any manner of Variance) per nomen Majoris & Burgensium de Linne Regis in comitatu Norf. (b) which imports all Averments requifite by the Law in this Cafe. And it is well observed in Sir Moile Finch's Case in the 6th Part of my Reports f. 65. a. that till this Generation of late Years it was never read in any of our Books, That any Body politick or corporate endeavoured or attempted by any Suit to avoid any of their Leafes, Grants, Conveyances, or other of their own Deeds, nor any other Grants, &c. made to them for the Misnosmer of their true Name of Incorporation. But after a Window was opened to give them light to avoid their own Grants for the Misnosmer of themfelves, what Suits and Troubles (to avoid Grants, &c. as well made to them as by them) have followed thereupon every one knows: But there it was faid, That for every curious or nice Misnosmer God forbid, that their Leases or Grants, &c. should be defeated, for

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(6) Hob. 125.

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for there will be a found (a) Difference betwist Writs and (a) Post. 133:a; Grants; and in all Cases it is true, quod (b) apices Juris; Co. 121. a. non funt Jura: For if a Writ abates, one might of com- 9 Co. 48. a. mon right have a new Writ, but he can't of common right 11 Co. 21. b. have a new Bond, or a new Lease, Grant, &c. And I well (b) Co. Lit. approve of the Book in 25 E. 3, 48. b. Where the Case 283. b. 304. B. was, That a (c) Prec' quod redd' was brought against the Nov 30. Prior of Worcester, and demanded a Manor, and the Write (c) Fitz Brief was Precipe Priori Wigornie, &c. The Tenant said, that 943. in Worcester there were two Priories, s. the Priory of Fryers Preachers, and the Priory of our Lady; and the Writ was abated: So I conceive it would be reasonable a multo fortiori to drive him who would avoid a Writing, Demile; Grant, &c. made by a Corporation, or to it, by reason of any verbal or literal Misnosmer, to shew that there are two Corporations in the same City, Borough or Town, &c. s. one by the true Name, and another by fuch Name as is contained in the Deed, &c. and so leave the Deed, &c. good by or to one of them. But when in Truth there is but one and the same Corporation, Leases, Grants, &c. made by them, or to them, ought not to be avoided by fuch nice and verbal Variances, when in Substance the true Name of the Corporation, either by matter expressed or necessarily implied in the Words themselves, appears to the Court; And as to the faid Case of the Hospital of the Savoy, It is true that Judgment was given in the Exchequer by Baron Clarke and Baron Gent, against the Opinion of Sir Roger Manhood Chief Baron totis viribus, and after the Writ of Brror brought, and the Case argued at the Bar, the said Thomas (d) Fanshaw compounded with Paschall for his (d) Moor 235; Leafe, and I was of Counsel with the said Tho. Fansbare: 228. And I conceive that there is little Difference betwixt the Antea 32. 6. Mayor and Commonalty of the City of London, and the Hob. 125. Mayor and Commonalty of the City called London; un- Leon. 159. less it can be shewed that there are two distinct Corporati- i Anders, 202; ons which have these two distinct Names. Also, there is a Difference betwixt ancient Corporations, and Corporations made of late Times; for ancient Corporations may by Ulage have divers and several Names, and Leases, Grants, Ec. by any of them will be good enough. And these, and divers other Differences you will find in your Books following. Vide the Case of the Dean and Chapter of Norwigh; in the third Part of my Reports 73, &c. Plow. Com: there's Croft and Howel fol. 537. 2 Ma. Dy. 97 8 98. 14 H. 8. 29. 16 H. 8. 1. 11 H. 7. 27. 12 H. 7. 14: 23 H. 7. 14

The Case of the Mayor, &c. PART X. 14 H. 7. 1. 16 H. 7. 1. 2 R. 3. 7. 1 E. 4. 7. 4 E. 4. 8.

8 E. 4. 18. 9 E. 4. 19. 11 E. 4. 2. 15 E. 4. 1. 20 E. 4. 12.

21 E. 4. 10. 21 E. 4. 55, 56. 3 H. 6. 28. 7 H. 6. 13. 19 H.

6. 64. 26 H. 6. 27. 21 H. 6. 4. 26 H. 6. Brief 101. 35 H.

6. 5. 36 H. 6. Brief 485. 12 H. 4. 19. 29 Aff. 9. 44 E. 3.

16. 34. 38 E. 3. 15, 28, 33. 22 E. 3. 9. 8 E. 3. 5. b. 5 A36.

8 Aff. 24. Register 178.

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Mich. 11 Jacobi Regis, which is entred Termino Sanctæ Trin. an. 10 Jac. Reg. Rot. 664.

Personal Marie Constitution

In the King's Bench.

William Clun's Cafe.

11/Illiam Clun Executor of Anne Breather was Plaintiff Ca lac soo. against Henry Archer Defendant, and demanded 91. 4 Leon. 247. Debt, and declared that the faid Anne Breather 16 Nov. ann. 3 Jacobi Regis by Indenture of the same Date demiled to the faid Henry one Messuage, two Mills, one Garden, and divers Lands in Cooperfale in Esser from the Feast of St. Michael the Archangel then last past for fifty Years, if the faid Anne should so long live, Reddendo & solvendo tro omnibus predict premissis presat Anne Breather exewior' & assignatis suis annuatim & quolibet anno durante untinuatione dimissionis predict' ad domum mansionalem Johannis Archer in Witham predict' plenariam summam rigint' & sex librarum bone & legalis moneta Angl' ad sustuor sesta sive terminos in anno usualia, viz, sesta nati-matis Dom' JesuChrist' Annunciationis beate Marie virginis univitat sancti Johan Baptist & sancti Mich Archangeli, al infra tresdecim septimanas proxim post quemlibet prad irum festival per equas & equales portion; by Porce of hich the said Henry Archer entred into the said Teneents, and had and held them usque ad & post fest nunciationis beate Marie virginis, anno regni regis unc 9. sc. usque 2. diem Aprilis anno 9 supradicto.
To quidem 2 die Aprilis pradict Anna apud Coousale pradict obiit, and for 9 l. for the Quarter due at Feast of the Annuntiation Anno 9 Supradicto, he brought

(a) 4Leon.247. Lr. Jac. 310.

44.

(6)Cr. [2c.310. 5 Co.22. a. 1 Rol. 450. Cr. El. 380. Cr. Jac. 500.

(c) Cr. Jac. 423, 500. 5 Co. 114. h.

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(e) Cr. El. 15. 1Rol. Rep. 390.

(f) 4 Co. 10.a.

(b) Co. Lit. Cr. Jac. 423, 5 Co. 114. b. (i) 10 Co. 82.2.

brought this Action, upon which Declaration the Defendant demur'd in Law; and this Case was often argued at Bar. and now this Term it was argued by the Justices Houghton, Dodderidge, Croke, and the Chief Justice: And it was refolved, that the Action of Debt was not (a maintainable : And because duo sunt instrumenta ad omnes res confirmandas & impugnond, ratio & authoritas: First I will report the Reasons of this Resolution, and then divers Authorities in the Point. And three Reasons of this Resolution were shewn. 1. Because the (b) disjunctive is added for the Benefit of the Leffee, and it is more for his Benefit to have the last Day, in which Case there are two Days of Payment, one voluntary, and that at the Election and Liberty of the Lessee to pay it at the Days of the said Feasts; the other Day of Payment is at the End of the thirteen Weeks after, and that is the (c) extreme and legal Time, and therefore forasmuch as the said Anne Breather died before the Co. Lit. 202. 2. extreme and legal Time, the Lene Quarter.

(d) Cr. El. 380. Rent by the Act of God for the same Quarter.

Cr. Jac. 228. and Grange's Case, Plo. Com. 172, 173. the most contact of the same of the known of the same of the sa extreme and legal Time, the Lessee is (d) discharged of the Vide Hill and Grange's Case, Plo. Com. 172, 173. the most extreme Time is the legal Time. And it is to be known, that in case of Payment of Rent issuing out of Land, there are four Times of Payment, the first Time of Payment voluntary and not fatisfactory, and yet good to some special Purpose. The 2, voluntary, and in case satisfactory, and in case nor, The 3, legal and fatisfactory absolutely, and not coercive, The 4, legal, farisfactory and coercive.

As to the First, if the Lessee, Donce or Tenant pay his Rent before the Day, it is voluntary, (e) and not fatisfactory, for the Cause rendred in the third Reason: But if it be paid in the Name of Seifin of the Rent, altho' it shall not (f) enure by way of Satisfaction, yet it shall give a suffici-Co. Lit. 315. a. ent Scisin to this purpose to have his Affise, or other Remedy; for the Law takes delight in giving Remedy; and therewith agrees Lit. cap. Attornment 127. b. Vide 45 E. 3. 44. b. 49 E. 3. 15. 15 E. 3. Execution 63. 37 H. 6. 33. 39 H. 6. 36. 5 E. 4. 2. As to 2, if the Rent is payable at the Feast of Easter, if the Tenant pays the Rent in the Morning, and the Leffor dies at two Hours before Noon of the fame Day: This Payment was voluntary, and yet it is a (g)Brownl. 106. good Satisfaction against the Heir; but not against the (g) Hard. 24. King, 44 E. 3. 3. b. As to 3, legal Time is a convenient Yelv. 167, 168. Time before (b) the last Instant of the Day, which is the (b) Co. Lit. most extreme Time, and is fatisfactory and not coercive; for till the End of the Day no Remedy is given by the Law, 21 H. 6. 40. a. As to 4, that is when the Rent is due and in arrear, and therefore it is well faid by the Poet, (i) Judicis Co. Lit. 171. a. officium est ut res, ita tempora rerum Querere, questio 3 Balitr. 170. tempore tutus eris.

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The fecond Reason was, when the Lessee doth not make (a) Payment at the first Day according to his Election, then (a) Rol. Rep. the Rent is absolutely due at the second Day, and the se-390. cond Day is as well Parcel of the Refervation as the first Day, and therefore after the Non-Payment at the first, it is now upon the Matter as much in Law, as if it had been referved (b) at the second Day only, for then the whole Elec- (b) 4 Leon. 19. tion is past, as in 17 El. 344. If (c) a Man by Deed grants a 1 And. 9, 10. Rent-charge to one and his Heirs, and doth not fay, for him Poph. 87. and his Heirs, and dies, now the Time of Election to make Co. Lit. 144. b: it an Annuity is past: And therefore if the Grantee brings 1 Rol. 23. Hob. 58. a Writ of Annuity against the Heir, it shall not discharge Plowd. 457. a. the Land, because when no Election remains, it is as much Br. Estate 65. in Law, as if there never had been any Election: And there- Br. Annuity 13. fore upon the Books in 43 E. 3. Bar. 194. 44 E. 3. 32. 15 E. 2 H. 4. 13. 2. 3. Execut. 63. 5 E. 2. 2, This Case was put, if one I Octob. makes a Lease for Years, or for Life, or a Gift in Tail, yielding by the Year a Pair of Gilt Spurs at the Feast of Easter, or twenty Shillings at the Feast of S. Michael the Arch-Angel: In this Cafe if the Lessee doth not pay the Spurs at the Feast of Easter, nothing is due till the Feast of S. Mich.

The third Reason was, because the Rent reserved is to be raised out of the Profits of the Land, and is not due until the Profits are taken by the Leffee: For these Words (d) (d) Co. Lit. Reddendo inde, or Reservando inde, is as much as to say, That the Leffee shall pay so much of the Issues and Profits at such Days to the Lessor, for (e) reddere inde nibil aliud (e) Palm. 481. est quam acceptum restituere, seu reddere est quasi retro dare, and Redditus dicitur a reddendo, quia retro it, sc. to the Leffor, Donor, &c. sicut provent' a proveniendo; and obventus ab obveniendo. And that is the Reason that the Rent to referved is not due or payable before the Day of Payment incurred, because it is to be render'd and restor'd out of the Issues and Profits, and that is the Reason, That if the Land is (f) evicted, or if the Lease determines before the legal (f) Co. Lit. Time of Payment, no Rent shall be paid, for there shall 292 b. never be an apportionment in respect of Part of the Time, as there shall be upon an Eviction of Part of the Land: And 3 11 therefore if Ten't for Life makes a Leafe for Years rendring Dyer 56. pl. 15.
Rent at the Feaft of Fafter and the Ten's Rent at the Feast of Easter, and the Lessee occupies for three Plowd. 134. b. Quarters of the Year, and in the last Quarter before the Feast of Easter, the Ten't for Life (g) dies, here shall be no (g) Cr. Jac. 228. Apportionm. of the Rent for three Quarters of the Year, because no Rent was due till the Feast of Easter, and no Apportionm. shall be in respect of Time; but in the same Case if Part of the Land had been (b) evicted before the Feast of (h) Co. Lit. Easter, and the Feast of Easter incurred in the Life of the 148. b. Leffer, there shall be an Apportionment of the Rent, but not in respect of the Time which well continued, but in respect that Parcel of the Land leased is evicted.

Rol. 225

Cr. Jac. 310,

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() 2 Lcon. 107. 108, 131. F. N. B. 130 h. 267. b. Benl. in Afh. Old. Benl. 3. pl. 8. Yely. 67. Owen 42. Cr. El. 118, 776,807. New Benl. 57. pl. 93. 3 Leon. 4. 4 Leon. 13. 3 Co. 22. 2. Co. Lit . 47. b. I Rol. 29, 30, 601. IRol Rep 221. 4 Co. 94. b. Cr. Car. 241. Cr. Jac. 505. 2 Sand. 237. 8 Co. 153. 2. 2 Rol. Rep. 47. 5 Co. 81. b. 2 Inft. 395. (c) Dy. 113. pl. 55. Cr. Car. 241. 4 Co. 94. b. 2 Rol Rep. 47. Cr. Jac. 505. 8 Co. 153. a. Mich. 34. H. 8. Cafe refolved by the Justices of the Lord Baldwin. (d) Cr. Jac. 228. 311, 310. Cr. El. 565, O:ph.Leg.159. 4 Leon. 247. Yelv. 167. Keb. 195.

And this Difference appears in our Books 27 E. 3. 84. b. In (a) Debt against Executors, declaring, That their Testator granted him a Pension of 20 1, to remain with him in the K.'s Wars at the Time that he should be reasonably warned, to take at 4 Terms of the Year equally; and shewing further, That he went with him to Callis by the warning of their Testator, and was there armed; and demanded Judgm. and prayed his Debt. To which the Def. faid, that for the first Quarter he was paid ; 1. and shewed forth an Acquittance, and before the 2d Quarter ended, the Testator died, and demanded Judgm, of the Action; and Mowbray of Counsel with the Pl. moved, fince you do not deny the Pension to be granted as one entire by the Year, upon a Condit. which we have perform'd, fc. that we have remained with him, We pray the Debt: But Wilby Ch. Juft. by the Rule of the Court, awarded that the Pl. should take nothing by his Writ, because there should be no Apportionment in respect of Part of the Time, altho' it happen'd by the Act of God. Vide 10 Moor 13. E. 4. 18. 20 H. 6. 6. 9 E. 4. 1. 30 H. 8. Br. Appointment of the Bealt in Kelw. am bound to you by Bond of 201, to be paid at 4 usual Feasts Bealt in Kelw. am bound to you by Bond of 201, to be paid at 4 usual Feasts Bealt in Kelw. am bound to you by Bond of 201, to be paid at 4 usual Feasts of the Year by equal Portions, the Obligee shall not have an (b) Action of Debt before all the Terms incurred; the same Law of a Contract: But if a Rent is reserved on a Lease for Years at 4 usual Feasts of the Year, the Lessor shall have an Action of Debt after the first Day, and shall nor stay till the Whole is due, because it is accounted in Law as a Reservat. of Parcel of the Issues and Profits of the Land, which is no Debt before the Day, as in the faid Case of a Bond or Contract: And that is the true Difference betwixt the Case of the Bond, and a Rent referved on a Leafe for Years in Lit. 117. b. Vide F. N. B. 267. and Note a Difference betwixt a Recognizance of a Debt payable at several Days, for that is not like a Bond, but a Rent reserved on a Lease for Years. Vide 3 Mar. (c) Dy. 103, another Difference betwixt a Covenant or Promise, and a Contract or Bond. Vide 5 Mar. Action fur le Case Br. 108. 10 E. 2. Execut. 137. and 16 E. 2, ibid. 138. Vide 9 E. 3. 7. For Authorities in the Point, I have seen a Report of a Case, Mich. 34 H. 8. in the Time of Baldwin Chief Justice of the Common Pleas, that it was the Opinion of all the Justices, that if a Man seised of Land in Fee I die Octob. makes a Lease of the same Land for ten Years, from the Feast of St. Michael then last past, yielding to him and his Heirs the yearly Rent of 201. at the Feast of S. Michael the Archangel, or within one Month after; That in this Cale if the Leffor dies between the Feast of St. Michael and the End of the Month, that the (d) Heir shall have the Rent as Brown! 106. incident to the Reversion, and not the Executors as Rent behind, because it was not due till the End of the Month.

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Grantee should have the Rent as incident to the Reversion. Mic. 2 & 3 P.

Grantee should have the Rent as incident to the Reversion. & M. Case re-And Mic. 2 & 3 P. & M. Prideaux Serjeant mov'd Mounta- folv'd in the gue Ch. Just. and the other Justices of the Com. Pleas, that Time of theld. if a Man makes a Lease for Years, yielding a yearly Rent at Mountague, the Feast of Easter, or one Month after, with Condit. of Reentry, and the Lessee (b) tendreth the Rent at the last Instant (b) Cr. El. 14. of the Feast of Easter, if the Lessor may enter upon demand 48, 73. made at the last Instant of the Month: And it seemed not, be-Plowd. 70. b. cause the Lestee had Liberty to pay it then: And the Diffe- Co. Lit. 211. 2. rence was taken betwixt the faid disjunctive Refervat. and 2Leon. 130, 131. when the Reservat. is at a certain Feast; and a Condition is added, That if it be behind by the Space of a Month after the Feast, that then the Leffor shall re-enter, there the Leffee, for the Salvation of his Leafe can't tender it at the last Instant of the Feast-day, because he has not such Liberty and Election as in the other Case. And it was said by the new Serjeants, That in the Time of the L. Baldwin it was resolved by all the Justices. That in the faid Case of the disjunctive Reservat. if the Lessor dies betwixt the two Days, the Heir shall have the Rent, and not the Executors: Which Cafe the C. Just. shewed in Court reported by an ancient and learned Bencher of the Inner Temple, Trin. 31 El. in the K.'s Bench, Rot. 666. between (c) Smith Pl. and Bustard Def. where the Case was (c) Trin. 31. El.
Rot. 666. Case in Effect, That Smith leased certain Land for Years, yield-adjudged intering yearly a Rent of 35 l. at the Feasts of S. Michael, and the Smith & Bu Annunciate of our Lady, or within 12 Days after each of the stard, in the hidFeasts payable at the Font-stone in the Temple Church, up- Ch. Just of on Condit. that if the said Rent of 35 l. or any Part of it be be- England. bind and not paid per pred spatium 12 dier' prox' post aliqd' 1 Leon. 141, wed Festorum seu dierum solutionis inde proutsupradict est, 142. hat then the faid Leafe should be void; and it was adjudged. hatthe Leffee in Safeguard of his Leafe should have 12 Days (a) after the 13 Days to pay the faid Rent, for when the Rent (d) Dy. 17: not paid at the first Day, it is as much as if it had been re- Pl. 97. 88. twed upon the 12th Day after: And where it is faid, per pl. 104. 142. ned spatium 12 dierum post, &c. by good Construction all Plowd. 172. b. e Words ought to take Effect, sc. post aliquod præd festor' dierum solutionis inde; and dies solutionis is the 12th by after the Feast, and therefore the Lessee shall have 12 ays after the 12th Day, which is dies solutionis post festum, and that for the Lessee's greater Advantage, for whose ment further Time was given; and these Words, redict Spatium 12 dierum, stand Right in good Sense, fer prædict' spatium 12 dierum post prædict' 12 dies, that is predict spatium, altho they have not the fame Begin-

ton & Dalton Parch.40.Eliz. folved inter Walgrave and Moor, in the Time of Cr. Jac. 227.

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Beginning as the other have; and fo the Quere in 3 & 4 Dy. 142. pl. 50. P. & M. 142. well resolved ad adjudged. Trin. 39 Eliz.
(a) Trin. 39. El. in Communi Banco inter (a) Pilkington and Dalton The Cate adjudged Case was; a Parson of a Rectory made a Lease for Years inter Pilkingrendring Rent at the Feast of St. Michael, or within one Month after; the Leffor died ten Days after the Feaft of Anderf. Time. St. Michael, and was barred by Judgment of the Court, be-Swinb. 323.

Cr. El. 575.

a Keb. 47.

40 El. in the King's Bench, the Case was, The Lady

(6) Cr. El. 380. Elizabeth Pawlet late the Wife of Chedwick Lord Pawlet, seised of the Manor of Wade in the County of Southampton for her Life, by Deed indented leafed the faid Manor to Will, Pawles for ninety-nine Years, if the faid Dame Eliz. should so long live, yielding the yearly Rent of 100 l. at Popham Chief the Feafts of St. Michael the Archangel, and the Annuncia-Justice of Eng- tion of our Lady, or within 40 Days after each of the said Feasts; Will Pawlet made Dulcibel his Wife Executrix, and died; Dulcibel took to Husband John Moor Esq; the 228, 233, 311. and died; Dulcibel took to Husband John Moor Efq; the 1 Bulltr. 1, 2. Lady Eliz. Pawlet made Ed. Walgrave her Executor, and 1 Brownl. 105. died the 13 Day after the Feast of St. Michael; her Execu-Yelv. 167, 168, tor brought an Action of Debt for the half Year ended at the Feast of St. Michael, before the Death of the Lady Blizabeth, and tota Curia contra Querentem: But by Entreaty of some of the Justices, John Moor gave the Plaintiff 101. And in the Case at Bar Judgment was given, Quod Querens nibil capiat per billam.

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In Banco Regis.

James Osborn's Case.

MIch. 9 Jacobi Regis in C. Banco Rot. 1427. James Of Jenk. Cent. born Generofus brought an Action on the Case against 270. c. 87. Fran. Middleton, and declared, That whereas the Plaintiff Hard, 41.
14 Febr. anno 4 Regis Jacobi had bought diversa bona & catalla, viz. unum fulcrum lecti, (a) Anglice a Field Bed- (a) Hob. 172. flead with a Testern and Curtain of Say, unum Canopium Lit. Rep. 161. war' a Canopy for a Bed of Dornix, unum operimentum 2 Rol. Rep. 61. vocat' a Rug, &c. ad valentiam 11 l. pro undecim libris ei-255. dem Francisco super 28 die Jun' tunc prox' sequen' solvend'. and declared upon Assumpsit, &c. (upon certain Considerations mentioned in the Declaration) ad deliberand bona predict, &c. which the Defendant had not done, &c. the Defendant pleaded non affumpfit; and the Jury found for the Plaintiff, and affeffed Damages and Costs, upon which the Plaintiff had Judgment; and the Defendant brought a Writ of Error, and affigned for Error, That Damages were entirely given for divers Things, and for some of them no Damages ought to be given: For where it is faid unum fulcrum lecti (b) Anglice a Field Bedstead, for that Da- (b) Cr.Jac.665.
mages might well be given; but for the Addition subfequent, sc. With a Testern and Curtains of Say, no Damages ought to have been given: For fulcrum lesti doth not include more then the Bedstead it self, for fulcrum dicitur a fulciendo, quo lectus sustinetur, and when (c) Damages are entirely given, and for Part no Damage ought to have been given, there Jura- (c) Hutt. 125. tores male se gesserunt in assidendo damna, and therefore no Hetl. 53

Judg- Hob. 189. Lit. Rep. 61.

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(a)Dy.369,370. pl. 56. 11 Co. 45. b. 56. 2. 2 Bulft. 28. Co. 108. 2. Rol. 784. Postea 132. a. Cr. Jac. 104. Hard, 166. Styl. 399.

(6) 5Co. 108.2. Hard. 166.

Judgment ought to have been given in such Case, and therewith agree * 9 H. 7. 3. a. b. in Rescous, and 28 H. 6. 10. b. and the Case in 22 El. Dy. 370. was cited, where the Case was, That (a) Clifford brought a Writ of Ejectione custod' terre & beredis, &c. and declared accordingly, and the Iffue was taken upon the Traverse of the Tenure, which wastried by Nisi prius pro Querente, and Damages affeffed generally, and it was faid in arrest of Judgm. that an Action did not lie pro custodia beredis, sed pro custodia terra tantum, and therefore in the Case supra, Damages were entirely affested for the Ejectm. of the Land and Heir, the Pl. relinquished his Damages, and prayed Judgm. of the Ejectm. of the Land only. All these Cases were agreed by the Court: And further in Proof thereof, two Judgments were cited, the first in Mic. 14 & 15 El, in the King's Bench, in Trespals by (b) Poley against Of born for breaking his Close, and beating his Servant (and did Rol. Rep. 52. not say per quod servitium, &c. amisit) the Def. pleaded Not guilty, and the Jury found him guilty generally, and affeffed Damages also generally, and it was moved in arrest of Judgm. because Damages were entirely given, where by the Law no Damages ought to have been given the Pl. for the Battery of his Servant, unless it had been alledg'd that by reason thereof he had loft his Service: For otherwise the Servant should have the Action, and not the Master: To which it was anfwered by the Plaintiff's Counsel, That it should be intended that the Court, (which ought to direct the Jury in Points of Law) had given Direction to the Jury for how much according to Law they should affess Damages, and therefore it should be intended in the Case at Bar, that the Jury had given Damages only for the Breaking of the Close, and not for the Beating of the Servant; for as much as for that (as the faid Case was) no Damages ought to have been affested: And they compared it to the Common Case, if a Man brings an Action on the Case against another for (c) scandalous Words (exempli gratia) for these, Thou art an arrant Knave, a Cosoner, and a Traitor, the Def. pleads Not guilty, and the Jury find for the Pl. and affels Damages generally, it is well done, for it shall be intended, that the Court directed the Jury to give Damages only for the actionable Words, sc. Thou art a Traitor, and not for the other Words for which no Action lies. But it was resolved by the Court, That in the faid Case of Poley Juratores in assidendo damna male se ges-(d. Cr. El. 329. serunt, for when Damages are (d) entirely affeffed, it shall be intended for all that which the Plaintiff complains for, and therefore it would be good Policy in fuch Cases to direct the Jury to give Damages for the Thing (e) only for which Da-

(e) 1 Rol. 767. Hurt. 52. Cr. Jac. 630. Cr. El. 329. 1 Sid. 38.

Cr. Jac. 127.

(e) Cr. El. 182.

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Damages ought by Law to be given; as if in the same Case the Jury had given Damages (a) particularly for the Breaking (a) Cro. Jac. of the Close, that had been good. And as to the Case of 127. flanderous (b) Words, the Court agreed the same to be (b) Cro. Jac. good Law for two Reasons, 1. That it is an Action on the 127, 343, 424 Case, and therefore he might well (c) declare his Case as Cro. El. 296, it really was, 2. Altogether is but one Scandal, and altho' 329, 685.

no Action lies for the faid Words, Thou art an arrant 1 Roll. 576, 767. Knave, a Cosoner, by themselves; yet being spoken at one 1 Anders. 120. and the same Time; and coupled with the other Words Moor 142, 143. aftionable, they aggravate them: But if at one Time the 780. 6. Defendant calls the Plaintiff Traitor, and at another Time Cro. Car. 327, he calls him arrant Knave and Cosoner, and the Plaintiff 328. brings an Action on the Case, and alledges the said several Hut. 52.
Words spoken at several Times, as several Causes of (6) Cro El 882. Action; there if upon Not guilty pleaded; the Jury affess Dimages entirely, Judgment shall be arrested for the Whole; for he grounds his Action upon two feveral Scandals whereas one is not actionable. Another Case was adudged in the King's Bench, Mich. 30 & 31 El. Regin' but it was entred Mich. 28 & 29 El. Rot. 476. the Case was such, (d) Moor brought an Action on the Case against Be- (d) 1 Rol. 242, kl, and declared; That whereas Pasch. 22 El. Bedel had 243, 244, 245. recovered by default in an Action of Waste, and 45 1. Da- Golds. 91. nages, after which Judgment, sc. ultimo Novembr. anno 5 Co. 108. a. 1 Leon. 170, 14 El. they submitted themselves to the Award of Palmer 1 Leon. 170, 1801. Rep.270, and Povy of all Matters then in Variance betwixt them, in 437.

Confideration that the Plaintiff had assumed to perform the 2 Rol. Rep. 2, Award on his Part; the Defendant made reciprocal Promile to perform it on his Part, and that he would not sue Winch. 33. Execution on the faid Judgment in the Action of Waste, 2 Bulltr. 258. md afterwards 10 Decemb anno 24. the faid Arbitrators Hard. 399. made an award in Writing to this Effect; they awarded Bridgm. 58,59. that Moor should pay to Bedel 10 L. at certain Days, and 151. at other certain Days, and for the Payment of the 151. ne Wm. Salter should be ready to seal and deliver fifteen nds, &c. and further they awarded, That whereas cerin Copyhold Land of the Manor of Langley in the Counof Bucks, of which the faid Bedel had made a (e) Lease (e) Co.Lit.59.a. Years by Indenture contrary to the Custom, &c. that e said Wm. Salter should do his Endeavour pro posse suo at no Advantage should be taken of the Forfeiture; d in consideratione inde that Bedel should discharge Moor 201. Parcel of the faid 45 1. recovered in the faid Action of Waste, and that upon the Readiness of Wilm Salter to seal and deliver the said fifteen Bonds, Bedel by his Deed should release to Moor all Actithen depending, and all Demands to the fifteenth Day June anno vicesimo quarto supradict'. And shewed

Off. 22 El.W. Satter offered to be bound in the faid 1 5 Bonds, and did his endeavour pro poffe fuo qu' nullum advantagium

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(a) 5 Co.78. a.

247, 259. 1Rol.Rep.270.

Rol. 243,

Kelw. 43. 2.

2 Sand. 293,

337. Hutt. 9. Cr. El. 432.

Hard. 46.

Yelv. 98. (6) Cro. El. 4. Godb. 12

Godb. 12. 1 Rol. 243

(e)22H.6.46.b. Hard. 41. Firz. Det. 49.

Br. Condit. 59.

Moor 3. 359. Cro. Car. 226.

caperetur de forisfactura, Esc. and affigned two Breaches of the Award, the one that the Def. had not made the faid Releafe upon Request made, the other, that he had sued Execution on the said Judgm. by Fi. Fa. and had levied 41. Parcel. The Defend pleaded Non affumpfit, and this Issue was found for the Pl. and 401. Damages given: And in this Cafe two Points were resolved which were only moved in the K.'s Bench; the one, that altho' the Parties had been bound by Bond to perform the Award (as in this Cafe by mutual Promifes) yet as to all that which was to be done by W. Satter, being a (a) Stranger to the Submission the Award was void; for they are not bound to perform any award, but that which is within the Submiffion, and so was it adjudged Pasch. 24. Regine El. Rot. 2417. between Ecclesfield and (b) Maliard in the King's Bench, and therewith agrees 19 E. 4, 5. b. by all the Justices. Vide (c) 22 H. 6. the Opinion to the Contrary, but the Cafe is good Law, but ill reported; for in an Action of Debt on a Bond, the Def. pleaded that the Bond was indorfed on fuch Condition, that if the Def. flood to the Arbitrement and Award of A. and B. of all Quarrels and Debates betwixt the Pl. and him, &c. that then the Bond should lose its Force; and faid that they awarded, that the Def. should pay to one Kendal 20 s. which he had paid him, Judgm. &c. Albion of Counsel with the Pl. took Exception to the Plea, because it appeared that this Arbitrement was Br.Arbiterment void, fo the Bond remained in Force: But that without Question is a Non fequitur: For if no Arbitrement, or a void Arbitrement is made, which is all one in Law, the Bond is not forfeited, nor shall the Obligee take any Benefit thereof; and therefore all that follows there is as I conceive) mistaken by the Reporter, as an Opinion not pertinent to the Case in Question. Vide 28 H. 6. 13. 8 E. 4

(d) Cro. Jac.

22. 19 E. 4.1. 21 E. 4. 75. 2. Altho many Things are awarded to he done in Satisfa ction of another (as that Case was) and some are (A) within the Submission, and some out, and so void; and altho a were intended by the Arbitrators to be a Plenary and entire Recompence, for the Things which the other should do it Confideration thereof notwithstanding if any Thing to b given or done to the Party, although it be of small Value, be within the Submission, the Award is good although it appears by the Intent of the Arbitra tors, that that which is within the Submission, withou

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the others was not a plenary Satisfaction for the Thing to be done by the other Party; whereupon Judgment was given for the Plaintiff; and thereupon the faid Executors of Redel brought a Writ of Error upon the new Statute; and the faid Exceptions moved in arrest of Judgment in the K.'s Bench were moved again; and the Justices of the Common Pleas and Barons of the Exchequer agreed as to them with the Judges of the King's Bench : And then another Error appearing in the Record was affigned, which was not mov'd in the King's Bench, and that was, That there were two Breaches assigned by the Plaintiff, one of the Refusal to make the faid Release, and the Other the suing of Execution; and as to the Release, the Award was void, and by Consequence Damages being entirely given, the Judgment given for those Damages was erroneous, and it appeared that (a) Hob. 191. the faid Release was out of the (a) Submission; for the Sub- 353, 578, 639, mission was of all Things in Variance, Ult. Nov. 24 El. and 640, 664. the Award was, that Bedel should release to Moor all De Cr. El. 858, 861. mands to 15 Day of June anno 24 El. and the Request to 1 Sid. 154. make the faid Release was anno 26 El. and so one of the Moor 885. Breaches was out of the Submission. Against which it was Hurt. 9. objected, that it is true, when two Points are put in Iffue, 1 Rol.258,24 and for one no Action lies, and Damages are entirely affer- (b) 5 Co.108 a. fed, it is erroneous, because both are directly within the Cr. Jac. 215, Charge of the Jury, as in the faid Case, of breaking of the Cr. Car. 327. Close and Battery of his Servant; but in the faid Case be- Hob. 189. tween Moor and Bedel, the Defendant in the Action on the (c) 5Co. 108. 2. Case, pleads Non assumpsit modo & forma, which is only 11 Co 45. b. 56.2 their Charge, and it shall be intended that the Court directed Dy. 369, 370. the Jury as to Damages for that Breach only which is within pl. 56 the Award and the Assumpsiv: And that Case depended long 1 Rol. 784. in Advisement: and after the Case had been often argued Cr. Jac. 104. before them, and upon Conference amongst themselves, it. Hard. 166.

was resolved by them all, That it should be intended (if it (d) 1 Rol. 242, be not specially found) that (b) Damages were given for 243,244.245, both the Breaches, and therewith agrees (c) Clifford's Case 247,258.

Solution of the Breaches, and therewith agrees (c) Clifford's Case 247,258.

Solution of the 2 Rol Rep. 192. Tenure, and Damages generally affeffed extended as well Jenk. Cent. 264. to the Custody of the Body as of the Land; and for as Goldsb. 91. much as in the said Case betwixt Moor and (d) Bedel, one Winch. 33 of the Breaches was out of the Submission, as it was resol- 1 Leon. 170. red by all the Justices and Barons, the Judgment given in Palm. 107 the King's Bench was for that Reason reverst.

But in the Case at Bar it was unanimously agreed 437.
that the (e) Judgment was well given by the Judges Bridgm. 58,59. of the Common Pleas, and that it ought to be af. (e) Jenk. Cent. med. And in this Case these Differences were agreed. Hard. 41. 1. Between the Cases in which two Things are directly Cro. Jac. 665.

2 Bulft. 28. 3 Bulftr. 258. 1 Rol.Rep.270,

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(a) Cr. Jac. (6) Hardres 4.

(c) Co. Lit. 304. b. Cro. El. 85. Dy. 239 pl.32. 2 Bulitr. 214. 8 Co. 161. 2.

(d)41E.3.21.2.

B. Brief 67.

Pitz Brief 524.

put in Iffue, or obliquely enquired of by the Jury; and the Cale at Bar, where there is but one Thing only, for Fulcr' lecti is only the Thing for which Damages are given, and for the Testern and Curtains no Damages were assessed, for they are not alledged positive, but expositivesc. unum (a) fulcrum lecti (b) Anglice; and the Exposition extends to more than fulcrum lecti fignifies, and therefore all the Refidue is a meer Nugation, and void, as a Thing not alledged; and by the Statute of (c) 36 E. 3. c. 15. It is enacted, That all Pleas which shall be pleaded, &c. be pleaded, shewed, defended, answered and debated in the English Tongue: And that they shall be entred and enfolled in Latin; and that the Laws and Customs of the said Realm; Terms and Process be holden and kept as they are, and have been before these Days. And it was resolved, That this Statute as to the first was introductive of a new Law, but as to the two other Branches, they are declarative of the Old; for of old Time, and before the Conquest, the original Writs and all the Process and Proceedings upon them were entred in Latin, and infinite Records before this Time yet extant are entred in Latin: And yet for the better Illustration of the Truth, a Deed, English, French or Dutch, &c. may be entred either in a Plea, or special Verdict, (d) 41 E.3. 16. Tit, Brief & Abatement de ceo Br. 49. (the Book at large being ill printed) in a Pracipe quod reddat, the Writ was, Præcipe quod reddat filie & beire, where it should be baredi in Latin, and for this Cause the Writ was abated, for as Shard Chief Justice saith in 29 E. 3. 31. a. Latin is a formal Language to put in Writs, &c. and English are the Words of the common People; and yet when English or French is Parcel of a Name, there it shall be suffered in a Writ, and therefore if the Name of a Manor be A. beside K. he may demand it in a Pracipe by that Name in English, for peradventure notwithstaning the Name, the saidManor lies in K. and therefore in a Pracipe if he should say in Latin A. juxta K. then without Question if any Part of the Manor should extend in-(e) Fitz.Br. 574. to K. the Writ would abate, and therewith agree (e) 44 E. B. Brief 67.
Statham, Brief he may be so named in a Writ; for if he should be named in a Writ Precipe Willielmo filio Johannis: It would be a good Plea to say that his Father had another Christian Name, as Richard, &c. and so abate the Writ; and so it is held in (f) Co. Lir. 3.2. 29 E. 3. 30. b. 31.a. (f) 40 E.3.22.a. 44 E.3. 12. b. 8 13. a. 11 (g) Firz Br. 180. Aff. p. 29. 11 E. 3. Estoppel 228. (g) 10 E. 4. 12. a. So I have Br. Estop. 165. read that one Henry had to his Surname In the Hall, and he brought a Writ by that Name, which confisted of three English Words, & bene, for his Name is not

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not reus Henricus in aula. Vide 29 E. 3. 2. a. So that brevia tam drigi-

nalia quam judicialia patiuntur Anglica nomina.

2. It was resolved, That Words which pass under the Name of Latin are of four forts. 1. Good Latin allowed by Grammarians. 2. Words fignificant, and known to the Sages of the Law, but not allowed by Grammarians, nor having any Countenance of Latin. 3. In what Cases Mala Grammatica. false Latin, or no Latin, and yet having Countenance of Latin, shall abate or destroy, and where not. 4. Words infensible, and of no Signification, and which have not any Countenance of Latin, are utterly rejected. Of the first forts are good and proper (a) Latin, and that without Question is (a) 1 Sid. 98, within the Stat. of 36 E. 3. Of the 2d fort, are mesuagium, 183. tossum, gardinum, bruera, jampna, maremium, &c. These 8 Co. 121. 2. and divers other of the same Nature are allowable, not only Stil. 328, 358. in pleading, but in original Writs also; for these Words are 2 Vent. 173. known to the Law, and to the Judges thereof, and fuch also i Buiffr. 126. are within the faid Act of 35 E. 3. And so in other Sciences Hob. 191. it is frequent, as the Professors of the Civil Law use, repri- Cr. Jac. 307. falia, feuda, shopu, solaria, and many other, the like; and many Times they use to explain them by Anglice, &c. as Sollaria, Anglice Warehoules; and the Physicians use this barbarous Word Brothium, for Broth, and such like. Of the 3d fort are false or incongruous Latin, which shall abate an original Writ, but shall not make any judicial Writ, Count, Pleading or Judgment vicious (for false Latin shall be in such Cases amended) a multo fortiori shall not avoid a Grant, or any Deed, &c. And therefore neither false Latin nor false English shall make void a (b) Grant or other Deed, when the (b) Co. Lit. Meaning of the Parties appears, Mich. 3. & 4 Eliz. in the 8 Co. 161. 4. Common Pleas, Rot. 1350. The Obligation was in Octagin- Ant. 126. a. ta libris, with Condition for Payment of 401. and altho' this 6 Co. 65. b. Word octaginta is minus Latinum, yet it was adjudged a good Cr. Car. 146, Obligation of octoginta libris. Nota octingent is 800. So Mich. Cr. Jac. 203, 44 & 45 Eliz. Rot. 1031. in the Common Pleas, the Ob- 261, 603. ligation was in septungenta libris, with Condition for Noy 119. the Payment of three hundred and fifty Pounds, and it was Yelv. 95, 96. adjudged, That that feptungenta should be taken for fep-Hob, 18, 19, 20, tingent', i. feven hundred Pounds. So in 9 H. 6, 7. a. Ob- 116.

Cr. El. 896.

ligation of wiginti libris taken for viginti libris, and 1 Brownl. 6t. 9 H. 7. 16. b. and 2 H. 4. 8. a. acc. Mich. 11. Facobi Re-Stile 302.
gis in the Common Pleas, a Bill was made in (c) Moor 645, 864.
gis in the Common Pleas, a Bill was made in (c) Br Obliga 4.71. English, sc. in sewtene Pounds which was false English, 2 Rol. 146, 147. and yet adjudged a good Bill of seventeen Pounds, Lurw. 423. for the Intent of the Parties appeared. Also when there Salk. 462. is no Latin Word for divers Things, as for a Stirrop, (c) Cr. Jac. 607. but a feigned Word Stapedia; and so for Velvet there

James Osborn's Gafe.

PART X.

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(a) I Jones Gr. Car. 554 Cr. Jac. 129.

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is no Latin Word for it: And therefore in that Case it may be said in pleading two or three virgatas velveti. And in all such Cases where it is no Latin, and yet is significant, and has the Countenance of Latin, it is wisely done, to make an Illustration of such Words, to add, (s) Anglice, as in the said Case before, Anglice of Velves; & sic de similibus as in the Case at Bar, operimentum, Anglice a Rug, there being no Latin Word for a Rug. And these are also within the said Act of 36 E. 3. Of the fourth fort are insensible Words, &c. as in the Case of Replevin Pasch. 36 El. between Thomas Ganyn and Sir Edmond Ludlow, the Detween Thomas Ganyn and Sir Edmond Ludlow, the Declaration was of divers Goods and Chattels, and amongs them was vitrium, and upon Issue joined the Jury affested Damages entirely for all. And it was resolved, that if vitrium be a Word insensible, and of no Signification, then is no Latin Word for it: And therefore in that Cafe it may trium be a Word insensible, and of no Signification, then Damages could not be given for it, but for the Residue only: But the Court did strongly incline, that it was but false Latin; for virrum is Latin for Glafs, and virrium has Countenance of Latin, and doth sufficiently affertain the Court that he intended it for Glase: And so quacunque via data, Gawyn had Judgment to recover. And afterwards by ill the Justices in the Case at Bar the Judgment was affirmed. of Property and Reads, and Read Medical

Note Reader, Multa renascentur que nunc cecidere, ca-- Maria denique Que nunc sunt in bonore vocabula, &c. Act has been derived in the Layer and he Layer and he waster

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Read and Redman's Cafe:

IN Debt brought by two Executors, one was fummoned 13 Co. 32. and severed, and afterwards he who was fevered died, Co. Lit. 139. a. and the Defendant pleaded it in Abatement of the Writ. And it was refolved, The Writ should not abate against the Book briefly reported in 38 E. 3. 11. where the Reporter. faith the cont Ter. Trin. 16 Reg. &c. and 20 E. 3. Accom 78. the Executors of the Earl of Salisbury brought an Account, and one was summoned severed and afterwards died, and the Writ by award was abated. But for the better Understanding of the true Reason of the Law in this Case and the Like, these Differences are to be observed. The first is betwixt Writs. (a) real original, and Writs real judicial. (a) Hutt. 37. For if two (b) Coparceners bring a real Action, and one is (b) Cr. Car. summoned and severed, and afterwards dies having Issue or (b) Cr. Car. s74, s83, 589, no Issue, the Writ stall abate. So if two Joint-tenants bring 1 lones 452. an Affise or other original real Action, and one is sum- (c) 11 Co.5. b. moned and severed, and he who is summoned and severed 1 Rol. Rep. 34, dies, the Writ shall abate, although the Thing in demand 77.

Shall survive; for a Man in a real Action shall never reco- 36 H. 6. 28. a.

Shall survive; for a Man in a real Action shall never reco- 36 H. 6. 28. a. ver upon a Writ either false in Words, or (c) unapt for his

Case; because he may have another Writ true and apt also,

Neither shall a Man recover a Moiety, where he may have

an original Writ to recover the Whole; and sometimes

by the Act of God subsequent the Words of the Writ well Cr o. C 575. brought become false or unapt for his Case, and in such Cro. El. 325

Cafes 1 Sand, 285.

Cases the Writ shall abate, and therewith agree 5 E. 3. 3. in a Writ of Aiel John de Hatton's Case 38 E. 3. 35. b. 37 H. 6. 11. b. 19 R. 2. Brief 925. Vide 38 E. 3. 43. But if two Goparceners bring a Sci. fa. which is a judicial Writ upon a Fine levied, &c. and one Coparcener is summoned and seve red, and dies without Iffue, the judicial Writ shall not abate: The same Law in case of two Joint-tenants; but if the Coparcener who dies has Isfue, then the Writ shall abate, as it is adjudged in 42 E. 3. 2. & 8. Vide 32 E. 3. Brief 292. 12 E. 3. ibid. 258. The 2d Difference is in real Writs original, where he who is fummoned and severed dies, which is the Act of God by which the Writ is abated, and taking of Husband, or entry into the Land by him who is fummoned and severed, which shall not abate the Writ, for these are the Acts of him who is summoned and severed, and the Writ by fuch Acts (where there is not any Summons and Severance) becomes only abateable; and therewith agrees 39 E. 3. 16. The 3d Difference is between real Actions concerning Freehold or Inheritance as is aforefaid, without having regard to Survivor, and Actions meer personal, or perfonal and in some manner mixt with the Realty, in which Chattels or entire Things are demanded: There if one Pl. be fummoned and severed, his Death (where the entire Thing survives to the other) shall not abate the Writ. As in a Writ of Ward of the Body 37 H. 6. 11. 38 E. 3. 35, 36, &c. Vide 50 E. 3. 7. 30 E. 3. 14. 38 E. 3. 36. 1 H. 5. 12. 9 H. 6.30, 56. 7 E. 3. 364. 17 F. 3. 11 Tit. Brief 665. 38 E. 3. 43. V.17 E. 3. 11. F. N. B. 35. 3 H. 5. 4. Qua. Imp. 71. 10 El. Dy. 279. And (4) 7Co. 26. b. in such case of (a) Quare Impedit in some Case the Death Moorg.

Co. Lit. 198. 2. Severance C. the property of the Plaintiffs shall not abate the Writ without any Severance, sc. where otherwise the Pl. who survives will be F. N. B. 35. I. without Remedy, &c. as upon a Plenarty and fix Months past, or that Laple will incur, which Reason peradventure will reconcile all the Books aforesaid, which prima facie feem to disagree; and that is the Reason given in some of the said Books, in 38 E. 3.36. 9 H.6.30, &c. That otherwise the Wrong done to the Pl. will be unpunished, or otherwise the Lapse will incut, &c. and peradventure such wrong will turn to the Difinheritance of the Survivor for ever, as if two purchase an Advowson in Fee, and a Stranger (b) 2 Rol. 383. usurps, and they bring a Quare Impedit, and the (b fix Months pass, and afterwards one of them dies, if in this case the Writ should abate by the Act of God, the Survivor would be disinherited of the Advowson for ever: But when after the Death of one of the Plaintiffs, the Surviver may have a new Writ without any Prejudice to him, there you will find in some of the said Books, that the Writ has been abated: But without Question if one of the

(c) Kelw. 47.b. Plaintiffs in a Quare Impedit be (c) severed and dies,

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the Writ shall not abate. In a Writ of (a) Detinue of Char- (a) Co. Lir. ters brought by three Coparceners. Vide 19 E. 3. Severance 286. b. 14. 20 H. 6. 45. 2 E. 3. Severance 19. In a Writ of Debt by Executors, which is the Case now in Question, 5 E. 2. Brief 802. 16 E. 2. Executors 111. 3 H. 7. 1. For there the Debt demanded is entire and furvives, but in these Cases if one Plaintiff dies without Severance, the Writ shall abate. Vide 2 R. 3. 1. Vide 37 H. 6. 16. In 48 E. 3. 32. Two bring a Writ of Warranty of Charters, &c. and the one dies, the Writ shall abate, for that is an Original; but in a quid Juris clamat by two, and one of them dies, the Writ shall not abate, for that is a judicial Writ, 48 E. 3. 32. And regularly in all judicial Writs in personal Actions, the Death of one of the Plaintiffs shall not abate the Writ, 41 E. 3. Execution 38. 11 R. 2. Brief 638. Vide 25 E. 3. 38. b. & 18 H. 6. 2. Vide 20 E. 3. Severance 17. that Summons and Severance lies not in quid juris clamat, but the (b) (b) Co.Lit. Nonsuit of one is the Nonsuit of both, for the Tenant shall 139. a. not be put to attorn to one only. Another Difference is between Writs in which something is to be recovered, and Writs in which nothing is to be recovered, but are to difcharge the Plaintiff only of a Burden: And therefore in Comb. 263, a Writ of Error the Death of one of the Plaintiffs shall a- 411. bate the Writ, 3 H. 7. 1. 2 R. 3. 1. a. 19 Aff. p. 7. & 44 E. 3. Brief 584. But in (c) Audita querela which is also an O- (c) Co. Lir. riginal, the Death of one of the Plaintiffs, or of one of the Yelv. 209. Defendants shall not abate the Writ, 2 R. 3. 1. 11 R. 2. Brief Cr. Jac. 19. 638. because he is to recover nothing, but only to discharge himself of a Burden and Charge. And for this Reason the Nonsuit of one is not the Nonsuit (d) of the other in an Audita (d) Co. Lit. querela; but there shall be Summons and Severance, 15 E. 6 Co. 25. b. 3. Severance 23. Nota Reader, Summons and Severance Cr. El. 448. is always before Appearance, and (e) Nonsuit after Appea- (e) Co. Lit. rance, where the Severance is without Process, &c. 38 E. 3, 139. b. 9. 26 Aff. P. 35.

VARIABLE .

Trin. 10 Jacobi Regis, in Communi Banco, which Plea began Hill. 7 Jacobi Regis, Rot. 1231.

Richard Smith's Cafe.

Ichard Smith Administrator of Gregory Backbouse was A Plaintiff in a Quare Impedit against Thomas Bishop of Peterborough, Thomas Abbot and Hugh Lloyd Clerk; and the Writ and Count was, de placito quod permittat itsum Rich' presentare idoneam personam ad medietatem Eccl' de Woodford in Com' Northampton, que vacat & ad suam spectat donationem, and in this Cafe after many Arguments at Bar. and now this Term at the Bench, divers Points were refolved. 1. That none should have a Quare Impedit presentare ad medieratem Eccl' but when there are two feveral Patrons, and two feveral Incumbents of the Church within one and the fame Town, fo that one Patron has a distinct and separate Advowson of one half of the Church, and his Incumbent has a distinct and separate half Part by it self of the Tithes and other Ecclefiaffical Profits in the same Town; and so has the other Patron and his Incumbent mutatis mutandis; and in that Case the Advowson and the Church are fevered in Right and in Possession: But when there is but one Incumbent, altho' the Advowson be divided and severed into several Hands, yet there shall never be Quare Impe-dit præsentare ad medietatem seu tertiam partem Ecclesie, &c. and the Reason of this Difference is manifest, for every Quare Impedit is in the Possession, and respects the Church which belongs to the Incumbent: And therefore in the Writ of Quare Impedit, id est, quod permittat ipsum pre-sentare ad Ecclesiam de W. and thereby it appears that the State and Quality of the Church directs the Quare Impedit; and therefore when the Church is not severed, but there is but one Incumbent, one Church, one Cure, it is not possible that in respect of the Seve-

Co. Lit. 17,

ralty of the Advowson, that any Qua. Imp. should be brought id medietatem, &c. Eccl for there is not any Moiety in the Church, but that is entire; but he who presents has a Moiety, Ec, in the Advewson: And therefore when at the Beginning of the Foundation of the Church, one and the same Church of one and the same Town was divided and severed in two Parts, and the Advowion of the one Part allotted to one, and of the other Part to the other; and that there should be two (a) several Incumbents, one de una medietate Eccl' and the o- (a) 1 ones 446. ther de alia medietate Eccl' and one Part of the Town should go to one, and the other to the other; there when one Patron presents to the Moiery of the Church, and is disturbed, he may well have a Qua. Imp. qd' permittat ipsum presentare ad
(b) medietatem Eccl' for in Truth the Incumbent shall have (b) F.N.B.33.4 but the Moiety of the Church, and not the whole Church, nor the whole Profits of the Church, nor the whole Cure of Souls. But the Writ of Right of Advowson is brought to recover the Advowson, and the Writ is Precipe qu'reddat advocationem Eccl' and therefore the Estate and Quality of the Advowson, and not of the Church shall direct that Writ; for the Incumbent of the Church shall not be removed by that Writ, for Advocatio belongs to the Patron, and Ecclesia to the Incumbent; and therefore it was utterly denied. That if a Confolidation is made of three Advowsons, so that all make but one Incumbent and one Church, in that Case altho'the Advowsons are several to present by turns, yet the Qua. Imp, shall be in such Case presentare ad Ecclesiam, for now upon the Matter itis but one Church and one Incumbent, (c) Vide F. N. B. 39. (c) IJones 446. 1.3.5 H.7.8. a. And it was objected that admitting that in fuch Case as has been put, so. where there are two separate Incumbents, that the Qua. Imp. should be maintainable de medietate Eccl' yet such special Case ought to be set forth in the Count, orelie it should not be intended, and no such special Matter is shedged in the Count in the Case at Bar. To which it was answered and resolved, That the Count in the Case at Bar was sufficient to ascertain the Court, That there were two (d) Pa- (d) Doct. pla. trons, and two Incumbents: For the Count was, That one Wm. 87, 248. Thorley fuit seistus de manerio de Thorleys in com' præd', ad 96 advocatio medietatis Eccl pred, &c. pertinuit & adhuc pertinet, in dominico suo ut de fcodo, &c. And always one is faid to be seised de advocatione medietatis, when there are two feveral Patrons; and so Prisot held in (e) 33 H. 6. 11. b. in Sir (e) Co. Lit. 17. b. Ed. Odingsel's Case: And therefore in the Case at Bar, when Postea 136. b. the Pl. declares, That Wm. Thorley was seised de advocatione Dy. 299. pl. 32 the Pl. declares, That Wm. Thorley was seised two Incumbents. pl. 167. medieratis, it implies two feveral Patrons and two Incumbents, pl. 1159. for there the Advowson and the Church are severed in Right and in Possession. (f) 14 H. 6. 15. b. per Newton acc. F. N. B. (f) Co Lit. 31. b. In 31 E. 1. (g) Droit 68, 69. it appears, That a (g) o. lit. 18. a Man shall have a Writ of Right de medietate advocationis, Cr. Eliz. 688. where the Advowson is parted betwixt two Coparceners,

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and one is disturbed by a Stranger: But a Writ of Right de advocatione medietatis Ecclesie lies where two several Patrons present two several Parsons to one Church, as there are in some Churches two Parlons, against the Opinion of Finchden in 45 E. 3. Fines 41. Vide 45 E. 3. 12. b. 17 E. 3. 38. b. Poining's Cale. Vid. 17 E. 2. Dower 163. a Writ of Dower de (a) F.N.B.33.2. tertia parte advocationis. Vid. (a) F.N.B. 33. (b) when a (6) F.N.B.30.c. Parson sues in the Spiritual Court for Tithes amounting to the fourth Part of the Value of the Church, against the Parfon of another Parish, that Parson who is fo sued may have a Prohibition called Indicavit, to the Ecclefiaftical Judge and to the Party, and then the Patron of the Parfon so prohibited may have a Writ of Right de advocatione decimarum z partis Ecclesia de S. vel 4 partis; but that Writ is given by the Stat. of W. 2. C. 5. verf. finem. Vid. 38 E. 3. 13. 31 H.6. 14. and the Stat. of Articuli Cleri, C. 2. and Conjunctim Feoffati, F. N. B. 30 E. D. & Stud. C. 25. f. 108. vid. 4 E. 3. 27, 29. 7 E. 3. 42. 8 E. 3. 49. 9 E. 3. 42. 2 H.7. 12. 12 E.4. 13. vid. Register 29. b. Pracipe quod reddat advocationem medietatis Ecclesia de S. vel 3. partis and F.N.B. 30. 31 E. 1. Droit 68, 69. 22 Ass. p. 33. where there are three Par-fons of one Church, and one in a Quare imp. declared presentare ad medietatem, where it should be ad tertiam partem, and the Writ abated, which proves that in such special Case a Quare imp. lies presentare ad medietatem, or 3 partem; 7 E. 3. 327. 8E. 3. 421. 33 E. 3. Qu. imp. 169. 14H. 6.15. 5 H. 7, 8. and therewith agrees the Book of Entries 477. Tit. Quare imp. divisione portion, Mich. 22 H. 6. Rot. 469. 2 Writ of Quare imp. was presentare ad 2 partes Ecclesia.
(6) Dy. 78. pl. 34. Vide 6 E. 6. 78. (c) Dyer the Lord Windsor's Case. And it was objected, There was not any Writ in the Register of any 4 Co. 75. 2. b. Quare imp. presentare ad medietatem seu tertiam partem Ecclesia, but only ad Ecclesiam. To which it was answerd, and resolv'd, That when the Register gives a Writ for the Whole, it is a fufficient Warrant, to bring it for any Part, if the Case will warrant it, and the later Part of the Opinion of Prisos in (d) 33 H.6.11. b. was denied, sc. that when there are two Patrons and two Incumbents of one and the same Church, fo that the Church it self is divided into Moieties, that there a Quare imp. will not lie to present to Moiety, for Reason and many Authorities in Law are against it, as appears before : But in fuch Cafe, I conceive, that in fuch Cafe the Patron de advocat' mediet' may have a Qu' imp' prasent' ad Ectest, for upon the Matter as to him it is one Church. And so the Pl. may have, as I conceive, a Writ in one Form or in the other; (e) 5Co.102.2.b. and therewith agrees (e) Windfor's Case in the 5 Part of my Reports, f. 102. where the Count was de advocat's partis, and yet

the Writ was ad Ecclesi', and not ad 3 partem. And so you will the

ruled to answer over, and so he did. Vide Trin. 14 Eliz.

5 Co. 102. b.

(d) Dyer 299. pl. 32. Co. Lit. 17. b. Moor 877. pl. 1199. Antea 136. a.

Rol. 347. Co. Ent. 489. Moor 558, 559. better understand the Reason of your Books and thereby attain Cr. El. 686, 687. to the true Sense and Judgm. of the Law. And afterwards Judg2 Rol. Rep. 131 Lit. Rep. 430. ment was given, That the Writ was good, and the Defendant

Richard Smith's Cafe.

or market make grade to the first of the fir

Ret. 1060. Pasch. 37 Eliz. Rot. 1226. Sir Thomas (a) (a) 5 Co. 102.b. Stanbope's Case. Pasch. 41 Eliz. Rot. 836. The Case of the Church of (b) Darssield, where such a Writ of Quare (b) 4 Co. 75. Impedit as this is in the principal Case, sc. quod permittat presentare idoneam personam ad medietatem Ecclesiae de Darssield was, upon Demurrer and solemn Argument, adjudged maintainable.

CASES

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UPON THE

Commissions of Sewers.

Pasch. 7 Jacobi Regis.

The Case of Chester Mill upon the River of Dee.

13 Co. 35. 1Mod. Rep.45. 4 Inft, 275.

A Causey or Milstank of Stone in the River of Dee and City of Chefter before the Reign of King E. I. certain Mills, some of the King's, others of the Subject, which flood at the End of the faid Causey; and now of late a certain Decree was made by certain Commissioners of Sewers, for a Breach to be made by ten Rods in Length in the said Causey, which Causey (as it was admitted by both Sides) was erected before the Reign of King E. r. and so hath continued until this Day, without any Exaltation or Inhauncement. And if by any Decree of the Commissioners, by Force of any Statute, any Breach might be made in this Causey, was the Question, which was referred by Letters of the Lords of the Privy Coun-

fel to the two Ch. Just', and the Ch. Baron; and upon hearing of Counsel learned divers Days, and good Consideration had in the Time of the last Vacation of all the Stat. concerning Sewers, and upon Conference had amongst themselves, It was resolved as follows. 1. Where it is provided by the Stat. of Mag. Char', (a) Quod omnes Kidelli deponantur de cætero (a) 13 Co. 25. penitus per Thamesiam & Medeweyam, & per tot' Angl' nist Magna Chasta per costeram Maris, It was resolved, That this Stat. extends cap. 23. only to Kidel, i. open Weares for taking of Fish; but the first Callis Led. Stat. which extends to the putting down or abating of any 258.

Mills, Mill-stanks and Causeys, was the Stat. of (b) 25 E. 3, (6) 13 Co. 35. 4. which Act appoints such only to be put down or abated, which were levied or erected in the Reign of K. E. 1. or sfier; but by the Stat, made (6) 1 au. H. 4. c. 12. upon Com- (6) 13 Co. 36. plaint in Park of great Damages which had happen d by the ourragious inhauncing of Mills, Mill-stanks, and other Impediments made and erected before the Reign of K. E. r. the said antient Milis and Mill-stanks were appointed by Act then made to be furveyed, and fuch as were found much inhaunced to be corrected and amended; Saving always reasonable Subfrance of such Mills, Mill-stanks, Weares, &c. so in old Time made and levied; None of which Acts extends to the Case in Quest'; for this Causey, &c. was erected before the Reign of K. E. r. and was never exalted or inhaunced after the Erection thereof: And the Stat. of (d) 12 E. 4. c. 7. confirms all the (d) 13 Co. 36. faid Acts and by them the generality of the faid Act of Mag. Char. is restrained, as by the said Acts appears. And by the Stat. of (e) 25 H. 8. c. 5. none of the faid Acts (as to the Point (e) 13 Co. 36, in Quest.) is repealed: For first, the same Act appoints the 2. Buller. 197. Manner, Form, Tenor and Effect of the Commission of Sew-Postea 139. a. ers, by which Power and Authority is given to the Commis-140. a. foners to survey Walls, &c. Sewers, Causeys, &c. Mills, &c. Callis Led. f. 1. and them to correct, repair, amend, put down or reform, as Cause shall require, according to their Wisdoms and Discretions; and therein as well to ordain and do, after the Form, Tenor and Effect of all and singular the Stat, and Ordinances made before the first of Mar. an. 23 H. 8. as also to enquire by the Oaths of honest and lawful Men, &c. thro whose Default the said Hurts and Damages have happen'd, &c. By which it appears, That the (f) Discre'n of the Commission. was limited (f) Co. Lit. f. toproceed according to the Stat and Ordinan's before made; 227. b. and then all the subsequent Clauses, And also to reform, repair 5 Co 100. 2. and amend the faid Walls, &c. by Force of this Word (faid) have 4 Inft. 41 relation to the precedent Purview of the Act: And further, to Hard. 146. reform, amend, prostrate and overthrow all such Mills, &c. and Cr. Jac. 336. other Impediments and Annoyances (aforest d) as shall be found Pob. 158. by Inquisition, or by your Survey and Discretion to be excessive CallisLed. 112. and buriful: Which Word aforesaid refers this Clause also to the precedent Purview, so. such Impediments and An-poyances as are against the Stat, and Ordinances before made.

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The Case of Chester Mill, &c. PART X.

Also it is further enacted by the said Act, That all and every Statute, Act and Ordinance beretofore made concerning the Premisses, or any of them, not being contrary to this present Act, nor beretofore repealed, shall from bence-forth stand and be good and effectual for ever. But the (a) 13 Co. 36. faid Acts of (a) 25 E. 3. and 1 H. 4. are not contrary to Antea 138. a. any Clause of this Act, nor were repealed before. And Antea 138, a. (b) 11 Co. 63,a. always fuch (b) Construction ought to be made, that one Part of the Act may agree with the other, and all to stand together. And if they had intended to have repealed the faid former Acts, they would not have repealed them by (c) 2 Rol . Rep. fuch general and (c) doubtful Words, concerning Causeys, Mill-stanks and Mills, when they concerned the Inheritances of many Subjects. And according to this Resolution we (d) certified the Lords of the Council, That the said. Statutes of as E. 3. and I H. 4. remained yet in Force; and that the Authority given by the Commission of Sewers, did not extend to Mills, Mill-stanks, Causeys, &c. erected (e) before the Reign of King E. 1. unless they had been raised and exalted beyond their former Altitude, and thereby made more prejudicial: In which Case they are not to (f) 13 Co. 36. be (f) thrown down or over-turned, but to be reformed by

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(d) 13 Co. 36.

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Mich. 7 Jacobi Regis.

In Communi Banco.

Keighley's Cafe.

HIS Term, upon Evidence to a Jury of Effect in the Case of one Keighley, It was resolved per totam Cur' k Communi Banco, That if one who is bound by Prescription to repair a Wall contra (a) fluxum Maris, and he (a) Dal. 642 keeps the Wall in good Repair, and of such Height, and pl. 26. In Kelw. In sufficient as it was accustomed; and by the sudden and Dal. in Kelw. In the walls are Dal. in Ash. broken, or the Water over-flows the Walls; That in this pl. 10. Case the Commissioners of Sewers ought to tax all such 68. pl. 187, Persons who hold any Lands or Tenements, or Common 78. pl. 200. of Pasture, or Profit of Fishing, or have or may have any 2 Bulstr. 200. Loss, Damage or Disadvantage by any Manner of Means Co. Lit. 53. b. the same Places, according to the Quantity of their lands, &c. for no Fault in this Case was in him who ought to repair it. And the Statute of (b) 23 H. 8. cap. 5. first (b) Antea138.2. uthorifes the Commissioners to enquire by the Oaths of the 13 Co. 36. onest and lawful Men, &c. thro whose Default the said Cr. Jac. 336 Hurts or Damages have happened, &c. and who hath or Callis Lett. f. 1. oldeth any Lands or Tenements, &c. or hath or may have my Hurt, Loss, or Disadvantage, &c. and all those Perons, and every of them to tax, &c. which ought thus to be intended, That when one by Prescription or

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otherwise ought to repair any Wall, Sewer, &c. that he ought to do it; but if he is not able to do it, and for inevitable Necessity it ought to be repaired, in Prevention of a great and publick Hurt; or if no Default is in him by reason of the extraordinary Rage and Violence of the Water, That the Commissioners of Sewers in such Cases have Power by the faid Act to charge all who have any Loss, &c. according to the Quantity of their Land, &c. But when one is bound by Prescription or otherwise to repair a Wall, &c. if any Fault is in him, and the Danger is not inevitable, but that he himself may well repair it, The Commissioners may by the true Intent of the Act charge him only to repair it; and if thro' his Fault the Danger becomes inevitable, or that he himself is not able to repair it, by which as it hath been faid, all are charged, &c. Every one of them may have an Action on the Case against him who is so bound to repair the Wall, &c. and Ihall recover their Damages according to their Loss. In (a) 18 E. 3. 23. an Action on the Case was brought against B. and the Pl. declar'd that the said B. was feiled of certain Lands in K. by reason whereof he and his Ancestors, and all the Tertenants a tempore cuius, &c. have made and repaired, when Need should be, so many Perches of the Wall of the Sea in K. &c. and for want of Reparation, &c. the Water entered and drowned the Pl.s Land, the Defend traversed the Prescription upon which they were at Issue, and it was found for the Pl', and that there was a Defect in the Wall for nor repairing of it; for which the Pl. recovered his Damages, and a Writ was a warded to the Sheriff to distrain B. to repair the Wall there where there was Need, and a Fault. Nota Reader, this Judgment in an Action on the Case, and the Reason there of is pro bono publico: for, (b) Salus Populi est suprema Lex; and therefore it is Part of the Judgment in this Acti on on the Case, That the Def. shall be distrained to repair the Wall. And in the Case at Bar, the Law is grounded upon great Reason: For altho' by the Law one be bound (e) 1. Co. 98. a. to keep and repair it, yet (c) impotentia excust legem, and that which comes by the Act of God, and is fo inevitable that by no Providence or Industry of him that is bound Co. Lir. 29.2. it can be prevented, shall not charge him: And therefor if, Tenant for Life or Years does not (d) repair a Sea Wal so that by this Fault the Land is drowned, and become unprofitable, it is Waste; but if the Land is drowned by th extraordinary Rage and violence of the Sea without his Faul it is no Waste: no more than if an House is burnt by Light ning, or overthrown by the Rage of the Wind or Tempel

without Fault in the Lessee, it is no Waste. And man times great Tides are occasion'd by strong Winds: And ther

(1) Stile 192.

(b) Noy 30.

Go. 11. a. 5 Co. 22. 2. 6 Co.21.b.68.a. Hard. 387. (d)Co Lir.53.b. F.N.B. f. 59. N.

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with, as to Waste, agrees the Opinion of the Court of Com. Pleas, in an. 6 Reg. Bl. in (a) Just. Dallifon's Reports.

And the Court had Confideration of another Clause in pl. 26. the faid A& of (b) 23 H. 8. e. 5. And to make and ordain 206. pl. 10.
Statutes, Ordinances, &c. after the Laws and Cuftoms of Dall. in Ash. Romney-Marsh in the County of Kent, or otherwise, after pl. 10.

Romney-Marsh in the County of Kent, or otherwise, after pl. 10.

Mo. 62. pl. 173.

Jour own Wisdoms and Discretions. J And it was reful- 68. pl. 187. 73. ved clearly, That the feveral Commissioners of Sewers pl. 200. throughout England are not bound to follow the Laws and Co. Lit. 53. b. Customs of (c) Romney-Marsh: But in Case where some 139. a. particular Place within their Commission, has such Laws 13 Co. 36. and Customs as Romney-Marsh has, there they may fol- 2 Bulst. 197. low them; for (d) confuetudo loci est observanda. Lastly, Callis Lect.f. 1. it was resolved, That these Words in the said Act, sc. Ac- 5 Co. 99. b. tording to your Wisdoms and (e) Discretions, are to be in- (c) 4 Inft. 276, tended and interpreted according to Law and Justice, for Callis Lett. 202. every Judge or Commissioner ought to have duos Sales, (d) 4 Co. 28. b. viz. Salem Sapientie, ne sit insipidus, & Salem Conscien. 6 Co. 67. a. ne, ne sit Diabolus. Also Discretion, as it is well descri- (e) 2 Bulstr. bed, is Scire per legem quid sit justum: And therefore the 197, 198.

Commissioners of Sewers ought to pursue as well their Hob. 158. Commission, as the Oath expressed in the faid Act of Co. Lit. 227.b. 43 H. 8. which they take to execute their Commission in 5 Co. 100. 2. the same Manner as it is their prescribed. And therewith 4 Inst. 41.

Antea f. 138.2. grees the Description of Discretion in Rook's Case, in the Hard. 146. fib Part of my Reports, f. 100. a. And it was well ob- Cr. Jac. 336. erved, That every Statute, Ordinance and Provision which made by Force of the Commission of Sewers, ought to confist upon four Causes, 1. The material Cause, and that the Substance, 2. The formal Cause, and that is the Manner, with convenient Circumstance, 3. The efficient laufe, and that is their Authority according to their Comission, 4. The final Cause, and that is pro bono publico, nunquam pro privato. And whereas the Opinion of salmesley Justice in Rook's Case aforesaid was, that if the 5 Co. 100. 2. wner of the Land was by Prescription bound to repair CallisLect. 1445 e River Bank, that yet upon such Commission awarded, Commissioners ought not to charge him only with the hole, upon Conference with Walmesley, and Flemming hief Justice, Telverton, Williams, and other Justices, it u agreed by Walmesley himself, and all the others, That a said Resolution upon the Difference aforesaid, was good Law: And Walmesley explained his Opinion in Rook's de, That the Commission. ought not to charge him who bound by Prescription only; that he meant where te is no Default in him (for that agrees with the Words the said Act of 23 H. 8.) and no inevitable Necessity man

(a) Dall. 61.

for Insufficiency or otherwise, but if he himself can do its there he himself shall be only charged by Force of the said Commission: And he said, That his Reason given in Rook's Case implied as much, so for otherwise it may be that all the Country will be drowned; which Reason imports his Meaning, That all who had Lands in Danger should not be charged, but in Case of Insufficiency of him who is bound, or for other inevitable Necessity.

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Mich. 7 Jacobi Regis.

The Case of the Isle of Ely.

Case was referred by the Lords of the Counsel to Coke A Chief Justice of the Common Pleas, Daniel and Fofer Justices of Common Pleas, concerning a Decree made by the Commissioners of Sewers, for making a new River within the Isle of Ely; and in Effect the Case was such.
The Commissioners of Sewers had decreed, That a (a) (a) Stile 192; new River should be cut out of the old River of Owfe, and through the main Land within the same Isle, for seven Miles, to another Part of the fame River: And for the doing thereof, they had severally taxed as well Fen, Drayton, Samsey, Over-Wivelingham, Rampton, Cottenham, and nine other Towns within the County of Cambridge, out of the faid Isle, as the Inhabitants of the faid Isle, and the Tax was general, sc. so much of one Town, and so much of another, and sic de singulis. And in this Case two Questions were moved: 1. If the Commissioners of Sewers might by Force of their Commisfon make fuch new River, or not. 2. If fuch general Taxation upon the Town was lawful, or not. As to the first, we must consider what might have been done by the Common Law, before any Statute made thereof. And it is to be known, that by the Common Law, before the Statute of 6 H. 6. c. 5. the King ought of Right to save and defend his Realm, as well against the Sea, as against the Enemies, that it should not be drowned F. N. B. 113. or wasted, and also to provide, that his Subjects have their Passage through the Realm by Bridges and High-ways in Safety: And therefore if the Sea-walls be broken,

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or the Sewers or Gutters are not fcoured, that the fresh Waters can't have their direct Course, the King ought to grant a Commission to enquire, and to hear and determine these Defaults: Which Commission appears in the Register, amongst the Commissions of Oyer and Terminer; in which it is faid, Nos eo quod ratione dignitatis nostre Regie ad providend salvationi Reg' nostri circumquaq; sumus stricti, &c. and with that agrees the Stat. of 6 H. 6. c. 5. and the Stat. of 23 H. 8. c. 5. and as to that vide a notable Precedent Pasch. 44 E. 3. Midd. 2. cor' Rege, pracept' est Vicecom' quod distringat A. B. & alios quod ipsi defectus walliarum erga terras suas reparant, & si ifsi sufficientes non fuerunt, quod distrin' omnes tenentes terrar', &c. qui desension', commod', salvamen, vel damnum ratione reparat' seu non reparation' wallie prad' habent seu aliquo modo habere poterint, ita qd'quilibet tenentium pred juxta quantitatem tenura sua ibid' contributionem prefat'A.B. & aliisad wallias illas faciend' & reparandas faciant indilate: Which Record was before any Act of Parliament that limited any Form of Commission. The 2 Thing observable in the said Commission at the Com. Law, is this Clause, Ad bujusmodi wallias, fossata, gutturas, sueras, pontes, calceta, & gurgites in locis necessariis reparand', & quotiescung; & ubi necesse suerit de novo facienda: By which it appears, That by the Commission in the Register at the Com. Law, that the antient Walls, Gutters and Sewers might be repaired or new made; but no new Walls, Gutters or Sewers, by Force of the faid Commission might be made. Then we must consider in what Cases the Stat. have made Provision in these Cases: And it is to be known, That the Stat of 6 H. 6. c. 5. enlarges the Commission which was at the Com. Law; for where these Words (de novo facienda) refer only to old Walls, Gutters, Sewers, &c. the faid Act hath these Words, & eadem & alia quotiescung; & ubi necesle fuerit de novo facienda; which Words (& alia) being added to the former Commission, give the Commissioners Power to make new Walls Gutters, Sewers, &c. but this Act continued but 10 Years; and by 18 H. 6. c. 10. the like Commission was established for 10 Years; and by 23 H. 6. c. 9. for 15 Years; and by 12 F. 4. c. 6. for 15 Years; and by 4 H. 7. for 25 Years; and by 6 H. 8. c. 10. for ten Years, and until the next Parlament and afterwards the Statute of 23 H. 8. c. 5. was made, which recites none of the former Acts as the others do, but enacts, That there shall be for the future a Commission of Sewers according to the Manner, Tenor, Form and Effect bereafter ensuing, and rehearles the Form of the Commission de verbo in verbum:

verbum: Which Commission omits the said Words (& alia) and follows the Commission in that Point which was at the Common Law; the Words of the Act of 23 H. 8. being, And also to reform, repair and amend the said Walls, Ditches, Banks, Gutters, Sewers, &c. and the same (omitting these Words, and other) as often, and where need shall be, to make new; and the former Claufe concerning Execution of the former Stat. and Ordinances, is restrained with these Words touching the Premisses, which refer only to repair the old Walls or Sewers, or to make them new; and also a subsequent Clause, That all and every Statute, &c. beretofore made concerning the Premisses, (which restraineth that Clause ut supra) not being contrary to this present Act, nor heretofore retealed, shall stand and be good and effectual for ever. So that it was a lived by the said Iustices. That by Force of the said Commission founded upon the Act of 23 H. 8. the Commissioners could not make the faid new River out of the main Land for four Reasons. 1. That this Moor 825. Act prescribes the Manner and Form of the Commission in Stile 192. express Words, which extends only to the Reparation and new making of old Walls, Gutters, &c. 2. That these Words, & alia, which were included in the Stat. of 6 H. 6. and all the said Acts are left cut of this Commission. 3. All the former Acts were for a Time, but this Act which establishes this Commission, is made perpetual by the Statute of 3 E. 6. c. 8. and therefore it would be hard to enlarge it beyond the Words, and to give Power to Commissioners to try new Inventions at the Charge of the Country, which perhaps will never take good Effect, but via trita est tutif sima. 4. It appears by the Register in the Writ of Ad quod damnum fo. 252. and F.N.B. 225.E. That if an old Ditch or Trench coming from the Sea to a Town, by which Boats or Vessels use to pass to the said Town; now if it is stopped by the Outrage of the Sea, and a Man would fue to the King, to have Leave to make a new Trench, and to stop the old Trench, he ought first to sue Ad quod damnum, to know what Damage it will be to the King or others: By which, and by the Writ in the Register de antiqua trenchea obstruenda & nova facienda seu babenda, it appears that no uch new Trench or River which runs to the Sea, can be made without the Writ of Ad quod damnum, and thereupon to obtain the King's License to make it. For if any Commissi. might do it ex officio, great Inconvenience thereupon for private Lucre might ensue as well as for publick Damage or stopping of Havens, (which are the Gates of the Kingdom) U 2

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dice to private Men, by drowning of their Lands and In-heritance, and therefore such new Rivers can't be made with-out the King's License, grounded upon a Writ of Ad quod damnum. Vide the Writ of Ad quod damnum in such Case. quia oprimum. But it was resolved, That as new Inventions, as of an artificial Mill to cast out the Water, or of a great River out of the main Land, and other the like, are not warranted by the faid Commission upon the faid Act of 23 H. 8. quia nibil semel inventum est & perfectum; so when an old Co, Lit, 230. a. Sewer is newly to be made or cleanfed, fome fmall Alteration in respect of the natural Change of the Current, or otherwise for the publick Good of fuch Place (and so in the like Cases) may be made. So when an old Wall by the extream Rage of the Water is broken down, to prefer the Lands within the same Level from inundation; another Wall, in Case of inevitable Necessity for the publick Good of that Part, may be made to defend the People and their Lands within the fame Level; for this Manner of Defence by Walling, is no new Invention, but the old Way and Mean well approved of by Experience, and upon the Matter it is but a new making of the old Wall in a Place by inevitable Necessity more fit than the other. But if by the timely Reparation of the old Wall, the extream Danger may be avoided, no other ought to be made; for si assuetis mederi possis nova non sunt tentanda: But when new Inventions are proposed, as is aforefaid, if they are apparently profitable, no Owner of the Land there will deny to make Contribution for his Advantage; and then it ought to be made by their voluntary Confent and Charge, and not by Constraint by Force of the faid Commission of Sewers upon the said Act of 23 H. 8. but fometimes when the publick good is pretended, a private Benefit is intended; and if any such new Invention is in truth (quod raro aut nunquam fit) good for the Commonwealth, and yet no Confent can be obtained for the making of it, then there is no Remedy but to complain in Parliament, and there to provide Relief, as Sir John Popham late Chief Justice of England did, who exhibited a Bill in Parliament anno 3 Fac. for making a new River in the faid Isle, which

Cro. Arg. 24,

377. b.

It was also resolved, that none could be taxed towards the Reparat. &c. but those who had Prejudice, Damage, or Disadvantage by the faid Nufances or Defaults, and who might have

tempt. But the Bill was utterly rejected.

he himself at his great Charge begun, knowing that without an Act of Parliament, none could be compelled by Force of the Commission of Sewers, to contribute to such new At-

Benefit

Benefit and Profit by the Reformation or removing of them-Also the (a) Tax, Assessment and Charge ought to have (a) Callis Sect. these Qualities. 1. It ought to be according to the Quan- 122. tity of their Lands, Tenements and Rents, and by the Number of Acres and Perches. 2. According to the Rate of every Person's Portion, Tenure or Profit, or of the Quantity of the Common of Pasture, or of Fishing, or other Commodity. And therefore it was clearly resolved by them, That the faid Tax (b) generally of a feveral (b) Moor 825. Sum in gross upon a Town is not warranted by their Commission, but it ought to have been particular, according to the express Words, upon every rottettor of Lands,
Tenemonia, Ecc. observing the Qualities aforesaid.
And it is to be observed, That there are three Manner of Statutes which concern Sewers: The first confists in defendendo & reparando wallias, seweras, &c. The 2. in destruendo & amovendo nocumenta, &c. The 3. which concerns both the Points, tam in destruendo quam in defendendo. Of the first Sort are Magna Charta, c. 15, & 16. 6 H.6. c. 5. 18 H. 6. c. 10. 23 H. 6. c. 9-12 E. 4. c. 6. 4 H. 7. c. 1. 6 H. 8. c. to. Of the fecond Sort, are Magna Charta c. 23. 25 E. 3. c. 4. 45 E. 3. c. 4. 1 H. 4. c. 12. 9 H. 6. c. 9. (6) 12 E. 4. c. 7. The third Sort of Statutes, which (6) Anter 152. concern both the former Sorts, are 23 H. 8. 6. 5. 25 H. 8. 6. 10. 3 E. 6. c. 8. and 13 Eliz. c. 9.

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Mich 10 Jacobi.

In Curia Wardorum.

Scrope's Cafe.

2 Rol. 162,263. 3 Keb 537, 551, 572. Lit. Rep. 111. Winch. 83. of the province

THE Case between Thomas Bridges and Anne his Wife Plaintiffs, and Elizabeth Scrope and others Defendants, was fuch: Nicholas Scrope feifed in Fee of the Manors of Harleston and Mount; and having Issue the faid Anne one of the Plaintiffs by Winifrid his Wife, by Indenture dated 26 Junii. 23 Eliz. for the Preferment of Winifrid his Wife and Anne their Daughter, covenanted with diverse to stand seised of the said Manors to the Use of the faid Nicholas, Winifrid, and Anne for their Lives, and afterwards to the faid Anne, and the Heirs of her Body, with other Remainders over; with a Proviso, That if the faid Nicholas during his Life, and after the Debts paid, mentioned in a Schedule annexed to the Indenture, should be disposed either to determine, disannul, change, alter, enlarge, diminish or make void the Uses or Estates, or any of them of the Premisses, or any Part thereof; That then it Shall be lawful to and for the said Nicholas, at all Times at his Pleasure, by his Writing indented under his Hand and Seal, subscribed in the Presence of three Witnesses, to determine, disannul, &c. And also by the same Writing at bis Will and Pleasure, or any other Writing whatsoever, signed and subscribed as above, to limit declare and appoint the Uses of the same to the Persons abovesaid, or to any other Persons, &c. Winifrid died, the said Nicholas married Eliz. Morrice; and by Indenture ult. Nov. 33 El. subscribed in the Presence of three Witnesses, in Consideration of a Jointure to be made to the faid El. covenanted with Wykes and Warnford,

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to stand seised of the said Manor of Harleston to the Use of the said Nicholas and Eliz. for their Lives, and afterwards to the Use of the right Heirs of the said Nicholas. &c. and other Conveyances of the Fee-fimple were afterwards made. And it was resolved by the two Chief Justices, and the Chief Baron, That although in this Case there is not any (a) express Signification of his Purpose or (a) Raym 301.

Determination to determine, disannul, &c. Yet forasmuch Hob. 313. as by the faid Indenture of 33 Eliz. he covenanted to stand 2 Rol. 262, 263. seised to the Use of himself, and the said Elizabeth then I Jones 393. his Wife, and afterwards to his right Heirs, it inured to 6 Co. 33. b. two Intents. 1. To declare his Purpose and Determination Co. Lit. 237. 2. to determine, disannul, &c. and thereby ipso facto the Winch. 83. former Uses ceased. And 2. the Covenant in the same Indenture inured to raise a new Use to the said Nicholas and Elizabeth his Wife, and to the Heirs of the faid Nicholas: And so it was resolved in a Case in the King's Bench, between (b) Frampton and Frampton, Trin. 2 Jac. Regis, quia (b) 2 Rol. 263. (c) non refert an quis intentionem suam declaret verbis, an (c) 3 Keb. 537. rebus ipsis, vel factis; and when he limited new and other 1 Rol. 300, 303. Uses, he thereby fignified his Purpose to determine and al- 10 Co. 52. b. ter the Uses before. But it was resolved, That all incident Circumstances prescribed by the Proviso, as to Subfcription, Witnesses, and other (d) Circumstances, ought to (d) Hob. 312.

Bridgm. 21.

Lit. Rep. 25.

Casuum istius Libri series.

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